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Letter dated 2 September 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council

In accordance with paragraph 8 of Security Council resolution 1526 (2004), I have the honour to transmit herewith the third report of the Analytical Support and Sanctions Monitoring Team established pursuant to that resolution. Currently, the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities is considering the recommendations contained in the report with a view to improving the established sanctions measures and their implementation.

I should be grateful if the attached report could be brought to the attention of the Council members and issued as a Security Council document as soon as possible.

(*Signed*) César **Mayoral**
Chairman
Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

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Enclosure

Letter dated 30 June 2005 from the Coordinator of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004) addressed to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

The Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities has the honour to transmit to you its third report in accordance with paragraph 8 of that resolution.

(*Signed*) Richard **Barrett**
Coordinator

Third report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities

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I. Summary

1. Al-Qaida continues to evolve and adapt to the pressures and opportunities of the world around it, and the threat of a significant attack remains real in all areas. At the same time, there has been a revival of the threat from the Taliban. The violence in Afghanistan is on the rise and is expected to increase further in the run-up to the parliamentary elections in September 2005.

2. The international consensus against Al-Qaida and the Taliban remains firm, helped by a common understanding of the high level of the threat and of the international consequences of a successful major attack. States increasingly see the advantage of making the Security Council sanctions regime as effective as possible, and more and more States, in all regions, wish to take an active part in shaping its development. The Security Council, through the Committee established pursuant to resolution 1267 (1999), has encouraged this engagement.

3. The key elements of the Security Council sanctions — the Consolidated List, the assets freeze, the arms embargo and the travel ban — continue to provide the basis for an effective regime. But there is scope to improve implementation of the measures and to make them more powerful. More States have come forward with names for the List, or improvements to existing entries, and to report activity with regard to implementation. But while there have been further reports of assets freezing, the combination of sanctions has still not achieved its full potential and the Monitoring Team makes further recommendations for improvement in this report. In addition, the report addresses two issues of concern to many States: the need for greater fairness in the application of the sanctions, and the lack of sufficient identifiers on the Consolidated List.

4. An analysis of States' efforts to apply the assets freeze indicates that many do it well, some do it adequately and others struggle to implement the measures. Apart from the lack of identifiers, the assets freeze suffers from the ability of terrorists and their supporters to use alternative and often illegal means to raise and transfer money. The Team puts forth specific proposals to deal with the abuse by listed persons and other terrorists of, for example, charities and other non-profit organizations and alternative remittance systems.

5. Terrorist tactics have evolved over the past several years, and the Team believes the arms embargo should change with the times and take into account the tactics of terrorists, including how their fundamental objective to influence public opinion through the media affects their choice of weapons. The Team suggests that the scope of the embargo and its links to other international non-proliferation agreements could provide fruitful areas for future work by the Security Council and the Committee.

6. States' implementation of the travel ban and similar national prohibitions continues to serve as an important deterrent to terrorists, forcing them to risk obtaining and using false documents. The Team supports initiatives to increase the use of biometrics in travel documents, and to enhance regional and international cooperation in matters relating to security and the travel of listed persons and other terrorists.

II. Introduction

7. Despite concerted international action and many successes, such as the arrest of prominent terrorists and the disruption of their operations, the threat from Al-Qaida remains as pernicious and widespread as at any time since the attacks of 11 September 2001. Despite a recent escalation in the number and gravity of their attacks, the future of the Taliban is uncertain. If they are unable to have a serious effect on the parliamentary elections in Afghanistan in September, they may begin to decline. While the pressure on the leadership of both groups has continued, the situation in Iraq and other areas of conflict has kept terrorism at the forefront of world attention, and there has been no shortage of fresh recruits. A new breed of fighters has begun to emerge that will present a dangerous and difficult challenge for the international community for some time to come.

A. Al-Qaida

8. The Al-Qaida message is simple but deceptive: the Islamic world is under occupation and it is the duty of all Muslims to liberate it, both from the enemy within and from the enemy without. Although expressed in religious terms to gain legitimacy, the objectives of Al-Qaida are purely political. Its tactics are the classic tactics of terror: to force political change through murder and intimidation. Al-Qaida is a Takfiri movement which claims that it alone embraces the true teachings of Islam and it justifies its violence as a holy duty of defence against all who disagree, who are therefore infidels and may be attacked.[1]

9. But if little has changed in the substance and delivery of the Al-Qaida message, much has changed in its operational reach. Al-Qaida terrorism now comprises three distinct but interlinked groups: first, the old leadership whose names are well known; second, the fighters who attended the camps in Afghanistan and graduated as experienced terrorists; and third, a new and growing generation of supporters who may never have left their countries of residence but have embraced the core elements of the Al-Qaida message.

10. The first group, which includes Osama bin Laden, still has importance and influence, and retains the hope that one day it will be able to reassert control of the organization. But it faces great difficulties and is largely restricted to the rough country on the Afghanistan-Pakistan border where the Monitoring Team has witnessed at first hand the efforts of the Afghan and Pakistan forces and the tremendous physical problems they face. Although Osama bin Laden and his chief lieutenant, Aiman Al-Zawahiri, may issue the occasional video or audio tape, their opportunity to exert any meaningful direction, as opposed to influence, is seriously limited. They are under real pressure from the international community and any two-way communication risks their security.

11. The most notable success of this group is the agreement struck by Osama bin Laden with Ahmad Fadil Nazal Al-Khalayleh (also known as Abu Musab Al-Zarqawi) in Iraq, whereby Osama bin Laden has been able to claim involvement

[1] Takfiris believe that all other Muslims, and their direct or indirect supporters, are infidel/apostate. They allow political violence as a means of transforming Muslim states into societies that adhere to their misinterpretation of Islamic law.

in a key issue of the day, and Abu Musab Al-Zarqawi has been able to attract recruits by adopting the Al-Qaida mantle. Its other main success is its survival, but its ranks are thinning and, in time, most of the key leaders will be caught or killed.

12. The second group, the fighters who trained in Afghanistan, is by contrast spread all over the world and actively providing expertise and leadership to local cells. Estimates of their numbers vary, but several thousand graduates of the Afghan camps survive. The Afghan Arabs[2] are the most prominent, but there were many others from the Caucasus, Central, South and South East Asia and elsewhere who disappeared either before or soon after the defeat of the Taliban in 2001. Many have now been identified by the international security community and are being hunted down, and they must use false identities and criminality to survive, which increases their risk of detection and arrest. But through their background and networks, this group nonetheless provides a significant backbone to the Al-Qaida structure, as well as experience and guidance for newly radicalized recruits who wish to become effective terrorists.

13. The final group is made up of new recruits who have become or are being radicalized by world events or by extremists in their communities who have already been seduced by the Al-Qaida message, or even by terrorist websites and in chat rooms on the Internet. Members of this group form cells locally without any direction from or contact with a central leadership. These cells are emerging as the main threat posed by Al-Qaida terrorism today. They are bound to the Al-Qaida leadership by an overall unity of purpose but remain independent, anonymous and largely invisible until they strike. They can be found in most areas of the world, in Muslim and non-Muslim countries alike, and comprise people from a wide range of social and educational background, age and ethnicity.

14. The new Al-Qaida associates may receive training from the veterans of Afghanistan or other areas of conflict, or they may merely aim to copy the actions of others as reported in the media. But to an extent Al-Qaida has managed to recover from the loss of Afghanistan as a training base for terrorism by exploiting the situation in Iraq. Recruits travel there from many parts of the world and acquire skills in urban warfare, bomb-making, assassination and suicide attacks. When these fighters return to their countries of origin or residence, and join those at home who are well integrated locally, the combination is likely to increase the threat of successful terrorist attacks considerably. Osama Bin Laden has already urged Abu Musab Al-Zarqawi to form groups to fight abroad[3] and he knows that he needs this new breed of hardened fighters in order to demonstrate that Al-Qaida still has the power to mount major attacks outside areas of conflict.

B. The Taliban

15. The Taliban remain a localized but serious threat in Afghanistan. Despite their failure to have any visible impact on the presidential election in October 2004, which was a convincing demonstration of the people's desire for peace and stability,

[2] Commonly used to describe graduates of the Al-Qaida training camps in Afghanistan.

[3] Statement by the President of the United States of America, 3 March 2005, at www.dhs.gov/dhspublic/display?theme=44&content=4382&print=true.

there has been in recent months an escalation in the level and brutality of attacks, including the murder of a moderate religious leader and the subsequent massacre at his funeral of more than 40 others with dozens more wounded; the decapitation of another moderate religious leader in his madrassah; the killing of five deminers employed by the United Nations; the murder of 11 employees of a Western-based development company; and, following a sham trial, the execution of at least four Afghan police officers. The increase in violence and the sophistication of the weapons and communications systems used suggest an infusion of money, an ability to recruit younger and increasingly vicious supporters, and a renewed determination by the Taliban and their backers to reverse the humiliation they suffered in October 2004 by an all-out attack on the parliamentary elections in September 2005. Much depends on the successful conclusion of these elections and on the ability of the Government of Afghanistan and the international community to counter the rising tide of violence, corruption and trade in narcotics.

16. Despite the recent offensive, many of the Taliban are thought to be ready to go home and the Government of Afghanistan has attempted to encourage this. The Government's Programme to Strengthen Peace divides the Taliban into three categories, the first of which consists of some 3,000 low- and mid-level fighters who may apply to the governor of their home province to return home and enter a local reconciliation programme supervised by community elders; the second of some 150 more senior fighters who may return home under certain conditions, but whose behaviour will be monitored by the security forces; and the third of up to 35 top Taliban leaders who will remain subject to arrest and excluded from the programme. Afghan observers expect that one effect of the programme will be to weaken the Taliban and isolate its leadership. Those Taliban who remain outside the programme may join the Al-Qaida leadership and, until their death or capture, will look for opportunities to mount terrorist attacks both inside and outside the region. But depending upon the success of counter-terrorism and anti-narcotics efforts in Afghanistan, they should, over time, cease to have much influence.

III. Background

17. The past months have seen the release of various influential reports and recommendations relating to terrorism sanctions, including the Secretary-General's address on the anniversary of the 11 March 2004 terrorist attacks in Madrid[4] and his subsequent report, "In larger freedom: towards development, security and human rights for all" (A/59/2005 and Add.1-3). Three of the "five pillars" on which the Secretary-General intends to base the United Nations counter-terrorism strategy are particularly relevant to the Al-Qaida/Taliban sanctions programme: the strategy must "aim at dissuading people from resorting to terrorism or supporting it", "deny terrorists access to funds and materials" and "defend human rights" (A/59/2005, para. 88).

18. The Secretary-General notes that the use of sanctions to target belligerents, in particular the individuals most directly responsible for reprehensible policies, will continue to be a vital tool in the United Nations arsenal. He adds that "**All Security Council sanctions should be effectively implemented and enforced by strengthening State capacity to implement sanctions, establishing well**

[4] "A Global Strategy for Fighting Terrorism", at www.un.org/apps/sg/sgstats.asp?nid=1345.

resourced monitoring mechanisms and mitigating humanitarian consequences" (A/59/2005, para. 110; emphasis in original).

IV. Consolidated List

19. The Consolidated List of Individuals and Entities Belonging to or Associated with the Taliban and Al-Qaida[5] is an expression of the resolve of the international community to defeat terrorism in general and to combat the individuals and entities supporting Al-Qaida and the Taliban in particular. Alongside the 12 thematic conventions against terrorism,[6] and in the absence of a universally agreed definition of terrorism, the List stands both as a symbol of international resolve and as a practical measure to address the global challenge to international peace and security posed by Al-Qaida, the Taliban and their associates.

A. Overview

20. Since the submission of the Team's second report (S/2005/83) on 15 December 2004, the Committee has added 10 names to the List — eight individuals and two entities — all associated with Al-Qaida. One individual was de-listed during the same period. The List currently contains 442 entries: 182 individuals and 116 entities associated with Al-Qaida, and 143 individuals and one entity associated with the Taliban.

21. The most recent additions to the List include Al-Qaida-associated terrorists and terrorist groups operating in Central, South and South-east Asia and the Middle East, including Iraq. Their involvement in terrorism encompasses a broad range of activities: bombing attacks including suicide bombings, hostage-taking resulting in death, bomb-making, terrorist intelligence operations, terrorist training, document forgery, and the provision of a range of financial and material support, including the funding and control of a website used to post Al-Qaida-related statements and images.[7]

B. Quality of the List

22. The Committee, assisted by the Monitoring Team, has continued to encourage States to submit names for possible inclusion on the Consolidated List. The Team believes that the List should reflect the geographic diversity of the threat posed by Al-Qaida, the Taliban and associated groups, and by adding relevant names from around the globe, the Committee promotes greater relevance, deeper engagement and wider acceptability of the sanctions regime. As well as the geographic spread, the List should reflect the range of activity of those associated with Al-Qaida and the Taliban, whether they recruit or support others to commit terrorist acts or carry them out themselves. Since the last report, several States have proposed names for listing for the first time and others have given assurances that they will soon follow

[5] See www.un.org/Docs/sc/committees/1267/1267ListEng.htm.

[6] The thirteenth on the suppression of acts of nuclear terrorism, will open for signature in September 2005.

[7] Information provided by Member States.

suit. Some of these States have sought the Team's assistance in the process. The Team continues to draw States' attention to the Committee guidelines and to stress the importance that the Committee places on having complete identifying information and a statement of the case for each proposed listing.

23. The Committee and the Team are not only focused on the quantity of names on the List, but also on their quality. To reflect the changing nature of the threat posed by Al-Qaida, the Taliban and associated groups as they continue to evolve and adapt, the List should be a live document that is frequently improved and updated as new information becomes available.

24. Ensuring the quality of the List means adding (or deleting) the relevant names and making sure that as many as possible are accompanied by complete identifying information. Member States continue to express concern that a lack of identifiers is hampering their implementation and enforcement efforts, as well as affecting the rights of innocent parties with names similar to those listed. The Committee, assisted by the Team, has worked to address this problem. For example, after the Team approached States with connections to certain listed individuals and entities, many of them provided additional information on the listed parties. Based on this information, the Team has been able to propose modifications to a substantial number of entries on the List for the Committee's consideration. The Team believes that this effort should continue until all the names on the List are as complete and as accurate as possible.

C. Changes in format

25. The Team also believes that several minor changes in format could assist States to implement the sanctions. The United Nations currently publishes the Consolidated List only in English. The Team believes that names on the List should be rendered both in an English transliteration and in the language likely to be found on original documents. The original name should be included next to the name as it currently appears on the List so that a border guard, for example, could check the name as it appears on a person's passport against the name as it appears on the List, without having to work back from the English version. This should also address problems related to the lack of standardization in the transliteration of names.

26. In addition, in its second report (S/2005/83, para. 40), the Team proposed that each name on the Consolidated List should be designated a permanent number for ease of reference, and the Team continues to believe that such a system would help States and their agencies (such as border police) and non-State actors (such as banks) to implement the sanctions more effectively. This system would help to eliminate the confusion that sometimes arises (due to a similarity of names) when States refer to Al-Qaida entries on the List based on their number at the time, as this number is assigned on the basis of the alphabetical order of the List and can change with every addition or deletion.

D. Other listing issues

27. The Team has identified certain other procedures that could, in its view, further strengthen the sanctions regime and its implementation. First, individuals and entities are added to the List upon a determination that they are "associated with"

Al-Qaida or the Taliban. Provision of a basic definition of terms by the Security Council or the Committee, particularly of "associated with," would provide States with a better understanding of when to propose names for listing, thereby encouraging new listings. It would also provide persons and groups with notice of the conduct that might result in their listing.

28. Second, the Committee guidelines encourage States, prior to submitting additional information on current listings or petitions for de-listing, to consult the original designating State.[8] In the case of de-listings, it will be the listed party's Government of residence and/or citizenship that initiates the contact, with the hope that a joint de-listing request would result. These contacts should be encouraged so that submissions benefit from all relevant information. For similar reasons, the Committee could consider whether, prior to listings, the proposing State, without prejudice to its right to continue with its submission, should be encouraged to consider contacting the State of residence and/or citizenship of the proposed designee, thereby ensuring as full as possible a statement of the case for listing, and more opportunity for national voices to be heard. This would also strengthen the sanctions by alerting States of residence and/or citizenship in advance of a likely need to freeze relevant accounts and impose the travel ban and arms embargo.[9]

29. Third, by paragraph 18 of resolution 1526 (2004), the Security Council strongly encouraged States to inform, to the extent possible, individuals and entities included in the Committee's list of the measures imposed on them, and of the Committee's guidelines and resolution 1452 (2002). This language could be strengthened to "calls upon" States of residence to notify, to the extent possible, such individuals and entities, in writing, of their listing, its consequences (namely, that they are subjected to a global assets freeze, travel ban and arms embargo), the humanitarian exception provisions of resolution 1452 (2002), the Committee guidelines, including the de-listing procedures they contain, and a relevant national contact where any inquiries or petitions should be directed.[10] As well as providing the listed party with basic information, this would strengthen the sanctions by ensuring that persons obtain actual notice of the prohibitions they are under, so allowing States, depending upon the scope of their laws, to impose criminal penalties for any subsequent violations.

30. Fourth, in accordance with the Committee's guidelines, States should provide a statement of the case against a party when proposing a listing,[11] although the

[8] Committee guidelines (www.un.org/Docs/sc/committees/1267/1267_guidelines.pdf), sects. 6 (a) and 7 (b)-(d).

[9] As a matter of practice, some States follow this procedure now and contact States of residence and/or citizenship prior to proposing a listing. This practice could be formalized and added to the Committee guidelines although, as in the case of consultations regarding new information or proposed de-listings, not made mandatory. See Committee guidelines, sects. 6 (a) and 7 (b)-(d).

[10] In its second report (see S/2005/83, note 27), the Team recommended that the Secretariat issue the notice immediately after each listing. Both approaches have certain advantages. Notification through the Secretariat would ensure a uniform notice to individuals and entities after a listing, but the provision of notice by the State of residence ensures that the listed party receives contact information for the relevant national government department, which is critical given that all humanitarian exemption and de-listing requests must come from a State and not from the individual. It also maintains the practice of having no direct communication between the United Nations and the individual, but instead having all contacts remain between the United Nations and States, and States and their residents.

[11] Committee guidelines (see note 8 above), sect. 5 (b).

statement and the allegations it contains are not generally made public. This means that other States often have to take action against parties with little or no understanding of what wrongful conduct occurred (or is occurring), hampering any national investigative or enforcement actions they might wish to take. A releasable statement of the case, available upon request or at the discretion of the Committee, would assist government investigative and enforcement efforts by providing as much detail as possible on the listed party's nefarious activities.[12] Of course, this proposal would not and should not prevent States from supplying the Committee with a confidential statement of the case, in addition to a releasable one, if appropriate.

31. Finally, some innocent persons may have their assets frozen or travel impeded because they have the same or a similar name to an individual on the List. States may be uncertain what to do in such cases and even whether they have the authority to unfreeze assets which have been frozen mistakenly. The Committee could clarify this matter in its guidelines, thereby providing guidance to States and proper protection for the innocent. In accord with the process utilized informally now, the Committee could stipulate that, where doubt exists, the State should freeze the assets concerned until it is able to confirm whether the owner is truly the listed individual. If the State is able to determine on its own that it has a case of mistaken identity, then it should unfreeze the assets immediately. If the State is unable to decide, then it should contact the Committee for assistance. This procedure unquestionably places a burden on the innocent owner by freezing his assets for a period, but balanced against this inconvenience is the greater public good of preventing funding of terrorism.[13]

E. The Taliban list

32. The Programme to Strengthen Peace launched by the Government of Afghanistan (see para. 16 above) would allow former insurgents back into mainstream Afghan society.[14] The programme requires former fighters to return openly, give up their arms and agree to respect the legitimacy of the Government, the rule of law and a community-based monitoring mechanism, along with other measures depending on the individual involved. The programme does not offer an unconditional amnesty or immunity from prosecution. The Government of Afghanistan has begun implementation of the programme in consultation with coalition forces and others. The effect may be to split rank-and-file Taliban and other insurgents from their leaders and to disrupt the command structure of the Taliban. This may undermine its current offensive and the further escalation of violence expected in the run-up to and during the 18 September parliamentary elections.

[12] This benefit to law enforcement counter-terrorism efforts is a primary reason the Team proposed in its second report (S/2005/83, para. 140) that the Committee release statements of the case and other background information to Interpol.

[13] In all cases the Team recommends that the State provide the Committee with details on the action taken and any relevant background information.

[14] Information on the Afghanistan Programme was provided by Afghan officials, as well as by the Special Representative of the Secretary-General for Afghanistan and officials of the United Nations Assistance Mission in Afghanistan.

33. A multi-ethnic national commission for reconciliation, which has been selected and is expected to be announced shortly, will oversee the process. The programme will not apply to individuals deemed as international criminals or terrorists, such as members of Al-Qaida. Persons found by the commission to have committed crimes against humanity will also not be allowed into the programme without being held to account for their crimes and offences.

34. The Afghan reconciliation programme and the Consolidated List have significant implications for one another, given that both involve a large number of the same Taliban-associated individuals. Although many of these persons may one day be approved for reconciliation under the Afghan programme, they will remain on the List until and unless the Committee decides to remove them. Their assets will remain frozen and they will effectively be unable to rejoin Afghan society (a key component of the reconciliation programme).[15] A potential conflict arises because the Afghan Government, through its reconciliation commission, makes the decision on reconciliation, while the Security Council, through the Committee, determines whether to de-list.

35. The Team has discussed these matters with officials in Afghanistan to remind them of their obligations under the sanctions regime; and subject to direction by the Committee, it has offered to assist as the Afghan Government works with the Committee on any de-listing issues relating to the reconciliation programme.

36. The Team foresees a three-part approach with respect to the Taliban list. First, the Government of Afghanistan should do what it can to provide full identifiers for the Taliban individuals on the List so as to allow better enforcement of the sanctions against them. Afghan officials have already begun this process. Second, the Government of Afghanistan should propose to the Committee that it add to the Consolidated List the names of any unlisted Taliban leaders who refuse to participate in the reconciliation programme or who are excluded from it. Third, in accordance with the chapter on de-listing in the Committee guidelines, the Afghan authorities should work with the original designating Government(s), and others as appropriate, to determine whether to propose for de-listing the names of those approved by the reconciliation commission. Following these consultations, the Government of Afghanistan may choose to submit de-listing petitions as appropriate to the Committee.

V. Implementation of the sanctions

37. The sanctions are intended as a deterrent as well as a set of preventative measures, but in assessing their impact it is natural to ask what assets have been frozen, how many listed persons have been stopped at borders and what arms have been denied to terrorists. It is difficult to provide an accurate answer to these questions. Some States that have reported freezing assets have not specified the amounts, and there have been no reports of listed individuals who have been stopped at borders or prevented from acquiring arms. However, States are not

[15] Two listed individuals have registered as candidates for the 18 September parliamentary elections: Mullah Abdul Samad Khaksar, the former Taliban deputy (security) minister of interior affairs, and Abdul Wakil Mutawakil, the former Taliban minister for foreign affairs. In addition, Abdul Hakim Monib, on the List as the former Taliban deputy minister of frontier affairs, is a member of the Loya Jirga and a supreme court judge.

obliged to provide updated reports to the Committee[16] and there are still 51 that have not submitted the original report requested by resolution 1455 (2003).[17]

38. Despite the difficulty of quantifying its effect, the Team is convinced that the sanctions regime is an essential element of the international effort against Al-Qaida, the Taliban and their associates. As most terrorist acts cost little and may require few operatives or arms, stopping even a small amount of money or any travel or arms sales may save lives. In addition, the sanctions serve to create a hostile environment for terrorists, and if they are deterred from attempting a wire transfer, a border crossing or an arms purchase, then the sanctions have fulfilled their purpose. Finally, there is the significant symbolic value of the sanctions regime as an expression of international condemnation of Al-Qaida and the Taliban, and a globally agreed programme of action against them.

A. Meaning of a United Nations listing

39. There are still misconceptions regarding the composition of the Consolidated List. The List contains names proposed by a country or multiple countries and deemed by all 15 members of the Committee to be "associated with" Al-Qaida or the Taliban. Although many of those on the List have been convicted of terrorist offences, and others indicted or criminally charged, the List is not a criminal list. Rather, it contains the names of those who have engaged in or supported Al-Qaida or Taliban terrorism in some tangible way, regardless of whether any authority has formally charged them with a criminal offence. This is so for several reasons.

40. First, as resolution 1373 (2001) recognizes, many States have not criminalized relevant acts of international terrorism; their laws may not adequately define a terrorist act or include as offences actions such as the financing of terrorism or acts planned for or carried out outside national borders. Second, the relevant evidence against terrorists might lie outside a State's jurisdiction or not be admissible in criminal cases because it is classified (whether by the prosecuting State or another) or because it was gathered and processed by officials of another country who cannot travel to the prosecuting State to testify. In some cases captured terrorists may be sought as witnesses, but the imprisoning State may not permit them to travel to other countries or to provide public testimony.

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[16] By resolution 1526 (2004), for example, the Security Council requested that the Committee "seek from States, as appropriate, status reports on the implementation of the [sanctions] measures", specifically with regard to the aggregate amount of frozen assets, but did not impose an obligation on States to provide updates.

In its second report (S/2005/83, para. 49 and annex I), the Team proposed that States complete a brief checklist after each addition to the List to show whether the new name resulted in the freezing of assets or had an impact on travel or arms. Of course, in the case of multiple new listings where nothing related to any of the listed individuals or entities was found within a country, a State simply could fill in the checklist as to one name and certify that the same results applied as to all others. As an alternative, the Council and the Committee could simply ask States to report periodically (such as once a year) on any activity regarding listed individuals or entities.

[17] Seven States have supplied reports pursuant to resolution 1455 (2003) in the six months since the Team's previous report (S/2005/83): Bolivia, Botswana, Burkina Faso, Burundi, the Democratic Republic of the Congo, Mauritania and Trinidad and Tobago. Another two — Guyana and Seychelles — provided submissions after the Team analysed the reports in mid-October 2004 (see S/2004/1037, note 2).

41. Furthermore, United Nations sanctions programmes have not required their targets to have been convicted by a court of law. The consent of the Security Council (whose members also make up the Committee established pursuant to resolution 1267 (1999), as well as other sanctions committees) is all that is required under Chapter VII of the Charter of the United Nations. After all, the sanctions do not impose a criminal punishment or procedure, such as detention, arrest or extradition, but instead apply administrative measures such as freezing assets, prohibiting international travel and precluding arms sales.

42. Although the Consolidated List is designed to prevent terrorist acts, rather than provide a compendium of convicted criminals, some of the listed, often despite clear evidence linking them to Al-Qaida or the Taliban, argue that they should be de-listed because they have not been convicted of or indicted for a terrorism offence. The Council and the Committee may wish to remind States (and their courts) that a criminal conviction or indictment is not a prerequisite for inclusion on the Consolidated List; the actions of an individual or entity in support of Al-Qaida or the Taliban — whether or not criminalized or admissible as evidence in a particular State — will continue to provide the basis for inclusion on the List.

43. It follows that States need not wait until a national administrative, civil or criminal proceeding can be brought or concluded against an individual or group before proposing a name to the List. Although occasionally a delay might be necessary for investigative or enforcement purposes, the Team believes that the preventative objectives of the sanctions regime are best served by the addition of the name as soon as a State has gathered the requisite evidence. Delays only serve to allow Al-Qaida or Taliban supporters to circumvent the sanctions by, for example, moving their assets or fleeing the jurisdiction.

B. National implementation mechanisms

44. There are three primary methods by which States implement the assets freeze.[18] First, many countries have adopted legislation or regulations that automatically impose the assets freeze upon listing by the Committee and issuance of a routine regulation by national authorities, without any need for a further assessment regarding each name; examples include Argentina, Australia, the Russian Federation, Singapore, South Africa and Switzerland, as well as the European Union. Other countries, such as Pakistan, implement the assets freeze automatically after each United Nations listing on the basis of their original United Nations participation legislation.

45. Second, the laws of some States authorize the executive to name those parties whose assets are to be frozen. Standards for executive designations vary: sometimes the executive, though not required to, may designate on the basis of a United Nations listing, as in New Zealand and the United Republic of Tanzania. Elsewhere, as in the United States of America, the executive is able to designate parties linked to terrorism, though United Nations listing is not explicitly stipulated as a pertinent factor. As with the first category above, these States generally do not require

[18] The Team recognizes that some States have legal mechanisms that do not fall precisely within these three categories. For details of the regional and national systems mentioned in this section, see annex I to the present report.

criminal standards of proof, or evidence of the commission of a specific criminal offence, before implementing the measures nationally.

46. Third, the remaining countries tend primarily to utilize the criminal code as a prerequisite for listing and freezing assets. In these systems, the State generally has to present to a judge or enforcement authority sufficient evidence of a party's commission of a specific criminal offence as a condition of freezing (or maintaining an emergency freeze) of assets.

47. The first of these implementation methods guarantees that the relevant States designate and freeze the assets of parties listed by the United Nations. When States adopt the second method, it is up to their national authorities to ensure that the executive actually designates each person and entity listed by the United Nations, but the countries generally have the legal authority to do so.

48. However, the third implementation method is problematic and generally does not satisfy the requirements of the sanctions, as mandated by the Security Council. The Committee adds parties to the List on the basis of its evaluation of information provided to it by States, with the consensus of all 15 members of the Committee necessary for a listing. To require local court approval prior to freezing the assets of parties listed by the United Nations would give judges in all 191 Member States a potential veto power over the mandatory decisions of the Security Council, acting under Chapter VII of the Charter. It would also mean that local judges could second-guess the decision of the Committee based on their own review of the evidence, which may or may not be the same evidence as that presented to the Committee (because the evidence given to the Committee is generally confidential). Furthermore, this would result in local courts judging United Nations listings based on criminal standards of evidence, despite the fact that the List is not a criminal list. This is untenable.

49. The Team's concern is more than theoretical. Countries needing judicial orders based on criminal standards have reported to the Team that they were unable to freeze the assets of certain listed parties because their courts required additional evidence, other than the fact of the United Nations listing, to freeze or to maintain a temporary administrative freezing order. Accordingly, the Team recommends that the Council and the Committee direct those States that have not done so to enact appropriate national legislation or other measures to allow the freezing of assets of parties on the List, without the need for criminal offences or criminal standards of evidence to be demonstrated.[19]

[19] The Team has worked with Member States and the Counter-Terrorism Committee Executive Directorate to ensure that certain national counter-terrorism legislation includes the relevant provisions suggested above. The Team intends to follow up with the Executive Directorate and other bodies such as the United Nations Office on Drugs and Crime to verify or recommend that any model counter-terrorism legislation offered for the benefit of States include these provisions. As an example, the publication of the International Monetary Fund entitled "Suppressing the Financing of Terrorism: A Handbook for Legislative Drafting" (2003) notes the national legislative requirements for freezing of assets pursuant to resolution 1267 (1999) and successor resolutions (see www.imf.org/external/pubs/nft/2003/SFTH/pdf/SFTH.pdf, pp. 57 and 58).

C. Legal challenges to the sanctions

50. The Team is aware of 15 lawsuits filed around the world challenging Member States' implementation of some aspect of the United Nations Al-Qaida/Taliban sanctions. In addition to the 13 cases noted in the Team's December 2004 report (S/2005/83, paras. 50-52), most of which remain unresolved, the chairman of the Al-Haramain Islamic Foundation has brought a case in the United States, and a national court in Brussels ruled that because two listed applicants had not been criminally indicted after a lengthy investigation, the Government of Belgium should petition the United Nations for de-listing.

51. Other cases have been filed or decided in the past six months that, while not challenging the sanctions, involve individuals or entities on the Consolidated List. These lawsuits include attempts by Dutch prosecutors to ban and disband the Netherlands branch of Al-Haramain and by Swiss prosecutors to investigate other listed individuals and a related entity. Annex II to the present report provides further information on these and other cases involving the sanctions on listed individuals and entities.

D. De-listing

52. De-listing issues have been high on the agenda of States and international organizations in meetings involving the United Nations and the Committee,[20] and have been raised by Member States in nearly all the Team's site visits and meetings this year. The Team has heard a range of suggestions for dealing with the matter, from far-reaching proposals that would remove some of the authority for de-listing from the Security Council and the Committee, to options that would maintain the status quo.

53. The Team believes that the Council and the Committee should consider an approach that leaves the fundamental Security Council structures intact and makes some minor modifications to the Committee's procedures. The Team reminds States that, despite suggestions to the contrary from the High-level Panel on Threats, Challenges and Change (A/59/565, para. 152) and others, the Committee has long had in place criteria for both listing and de-listing.[21] But the Committee may want to clarify its guidelines in certain respects in order to address the possibility of "lagging support" as perceived by the High-level Panel (A/59/565, para. 153).

54. Various issues have been raised by Member States. Some countries say that they are hesitating to submit names for listing because they allege the system lacks a robust de-listing mechanism. Criticism of the work of the Council and the Committee in this area risks tainting the entire Al-Qaida/Taliban sanctions regime, and should not undermine the universal support it has so far enjoyed. In addition, various courts — including the European Court of Justice — are grappling with cases that challenge the compatibility of the sanctions regime with fundamental rights. Any improvement in due process reduces the risks of an adverse decision that

[20] A number of States have made statements in this respect during Security Council meetings (see S/PV.5031, S/PV.5104 and S/PV.5186). The Committee and its Chairmen have acknowledged Member States' concerns regarding listing and de-listing procedures; see press release SC/8394, 25 May 2005, S/PV.5031 and S/PV.5104.

[21] Committee guidelines (see note 8 above), sects. 5-7.

could complicate implementation.[22] While a valid concern exists against weakening the sanctions, or appearing "soft" on terrorism, improved de-listing procedures would strengthen the sanctions while adding fairness. Finally, due process is just that: a process. It does not weaken the substance of the United Nations counter-terrorism programme. Rather, it strengthens the sanctions by increasing global support for them.

55. Accordingly, the Team offers the following suggestions for the Committee's consideration. First, as the Team earlier recommended (S/2005/83, para. 56), the Committee could require in its guidelines that States forward petitions for de-listing to the Committee. Currently, the guidelines require parties to submit de-listing petitions to their State of residence and/or citizenship, and that Government — depending upon its policies or sympathies — may or may not submit the petition to the Committee.[23] The Team believes that, after the requisite consultations between the State of residence and/or citizenship and the original designating State, in accordance with the guidelines,[24] the State of residence and/or citizenship could be required to submit the de-listing petition to the Committee along with an approval, objection or neutral position. In this manner, the Committee would be the body to make the final decision, and listed individuals and entities would receive additional procedural protection.[25]

56. Second, the Committee could consider enlarging the number of States that may submit de-listing petitions. Section 7 of the guidelines allows States of residence and/or citizenship to submit de-listing petitions received from a listed party. This could be broadened to include at least the State that originally proposed the listing, as it may obtain new information that would change its view of the case. Also, just as any State can propose listings on its own, so could any State be permitted to propose de-listings, even one that has not received a formal petition from a listed party.

57. Third, the Committee guidelines now provide that: (a) after consultations between relevant States, de-listing petitions may be submitted to the Committee pursuant to the no-objection procedure; and (b) the Committee will reach decisions by consensus of its members. The guidelines could also provide that the Committee will endeavour to reach a decision within a defined period from the receipt of a

[22] A decision in two joined cases before the Court of First Instance of the European Court of Justice is expected on 21 September 2005.

[23] Committee guidelines (see note 8 above), sect. 7.

[24] The guidelines provide that the State that receives a de-listing request shall review all relevant information and then consult the State that originally proposed the designation prior to submitting the petition to the Committee. The guidelines also permit a petitioned State to approach the Committee with the petition without an accompanying request from the original designating Government. If the review and consultation period extends beyond a reasonable period, the Committee could consider allowing listed individuals or entities to choose to have their petition notified to the Committee, by the petitioned State, before the conclusion of the consultations.

[25] As the Team noted in its second report (S/2005/83, note 26), the Committee may prefer to continue to receive de-listing petitions from States, rather than from individuals or entities. Nevertheless, parties should be able to notify the Committee, possibly via notification to the Team, if a State refused or failed to forward their petitions to the United Nations.

de-listing petition, where possible, and will provide notice to the petitioning State of the outcome.[26]

VI. The assets freeze

A. Progress in implementing the financial measures

58. On the basis of the reports submitted to the Security Council under resolution 1455 (2003), and its further investigation, the Monitoring Team believes that States fall into three broad categories when it comes to their ability to implement the financial measures imposed on the individuals and entities on the Consolidated List: States with robust systems to implement the assets freeze; States with less elaborate, but adequate systems; and States that appear to be struggling with implementation and may need technical assistance to reach the required standard.[27]

59. The Team notes that the States that implement the assets freeze most effectively generally tend to be involved in a range of related international action. It appears that the more that States engage internationally, the stronger their procedures become. The Team therefore believes that in order to improve their ability to implement the assets freeze, States should take part in Financial Action Task Force (FATF) initiatives[28] and anti-corruption efforts, be able to exchange financial intelligence internationally, impose internationally recognized know-your-customer rules[29] and ratify international conventions related to terrorism.[30]

60. Between 30 January 2004 and 30 June 2005, six States[31] reported freezing assets, all of which were found in bank accounts. These assets, worth $2,319,386,

[26] The Team previously recommended that the Committee's guidelines should clarify that de-listing is available, under certain conditions, both for a party that was designated wrongly and for those who renounce terrorism and demonstrate to the Committee's satisfaction that they are no longer associated with Al-Qaida or the Taliban (S/2005/83, para. 57). The Team had also proposed that the Committee consider including in its guidelines a provision to allow, under specific circumstances, for de-listing of deceased persons to preserve the credibility of the List, to allow innocent heirs to take title to assets, and to avoid unnecessary action by States which must check those names at border points or when attempting to identify and freeze assets (ibid., paras. 61-63).

[27] The indicators of a State's ability to implement the financial measures include whether it has the legal basis to freeze assets; enforces action on the Consolidated List; imposes know-your-customer rules and Suspicious Transaction Reports beyond banks to non-bank financial institutions and relevant non-financial entities; has a Financial Intelligence Unit or equivalent; commits additional resources to set up a specialized unit (task force) to monitor potential terrorist financing activities; requires the registration or licensing of informal remittance system operators and obliges them to comply with know-your-customer and Suspicious Transaction Reports requirements; monitors non-profit organizations through registration and obliges them to have regular audits and to file annual financial reports; and has a transparent mechanism for monitoring the movement of or trade in precious commodities.

[28] Such as becoming members of FATF or FATF-style regional bodies, pursuing self or mutual evaluation or implementing FATF recommendations.

[29] Such as the October 2004 standard of the Basel Committee on Banking Supervision on consolidated know-your-customer risk management (www.bis.org/pub/bcbs110.pdf).

[30] In particular, the International Convention for the Suppression of the Financing of Terrorism (1999).

[31] Belgium (€1,723), Iran (Islamic Republic of) ($2 million), Italy (€3,787.94), Malaysia (RM 274,409.17), Switzerland (230,000 Swiss francs) and the United Kingdom (£23,457.16).

bring the total of assets frozen in the 32 States that have reported taking action to close to $91 million (at June 2005 exchange rates), excluding the assets frozen in five States that did not specify amounts.

61. In order to prompt further reporting, and to ensure the proper implementation of the assets freeze, the Team wrote to 19 States[32] about the assets of listed individuals and entities recorded as present within their jurisdiction. By 30 June 2005, the Team had received eight replies.[33] These provided useful further information on additional assets that had been frozen; the difficulties of dealing with entities that customarily dealt in cash and moved money by cash couriers; and the restrictions imposed on States by national privacy laws when it came to specifying what assets they had frozen and to whom they belonged.

62. Most States continue to rely on systems designed to combat other forms of financial crime to deal with the financing of terrorism. But many are now reinforcing the work of their Financial Intelligence Units with special inter-agency task forces set up specifically to counter the financing of terrorism.[34] These task forces attempt to identify terrorists through analysis of a variety of data and do not rely solely on know-your-customer records and Suspicious Transaction Reports. This is a welcome trend.

63. But the Team believes that it is not enough to look only at what is happening in the official banking sector. As well as finding ways to monitor transactions conducted elsewhere, such as through informal remittance systems, States need to consider how to ensure that people such as lawyers, accountants and others who may handle or hold assets on behalf of third parties are aware of the Consolidated List, and of their obligation to enforce the assets freeze.

64. In addition, successful counter-terrorism work depends on international cooperation. While this has increased, recent studies suggest that much more could be done, and that in many cases the underlying bilateral and multilateral agreements on which effective international cooperation must depend are still lacking.[35]

B. The importance of identifiers in locating assets subject to the measures

65. As well as the clear identification of the individual or entity subject to the measures, a full address is also a key to effective assets freezing. Of the 182 individuals associated with Al-Qaida on the Consolidated List, only 92 (51 per cent)

[32] These are Afghanistan, Albania, Azerbaijan, Bangladesh, Belgium, Bosnia and Herzegovina, Canada, China, Comoros, Ethiopia, Georgia, Indonesia, Kenya, the Netherlands, the Russian Federation, Saudi Arabia, Sierra Leone, the Sudan and Tajikistan.

[33] Albania, Belgium, Canada, China, Indonesia, the Netherlands, the Russian Federation and Sierra Leone.

[34] An example of an effective Financial Intelligence Unit is given at annex III.

[35] See International Monetary Fund, "Twelve-Month Pilot Program of Anti-Money Laundering and Combating the Financing of Terrorism Assessments", at www.imf.org/external/np/aml/eng/2004/031004.pdf.

are clearly linked by address to any State.[36] Of the 116 listed entities belonging to or associated with Al-Qaida, only the location of 75 (65 per cent) is recorded. This lack of information seriously complicates the implementation of the assets freeze. The List also contains 20 entities with an address in Somalia, where there is no central authority capable of implementing the sanctions, nor a banking system able to freeze assets.

66. In all, 44 States have listed individuals or entities recorded as located on their territory. Of these, 25 have reported finding and freezing assets and 13 have reported that they have not located any assets subject to the measures. The situation in the rest remains unclear and the Team continues to investigate. In addition, seven States[37] have found and frozen assets although no listed individual or entity was recorded as being present on their territory.

C. Trends in Al-Qaida/Taliban financing

67. Al-Qaida and the Taliban have come under considerable financial pressure as a result of international action. They have had to adapt to the loss of the easy flow of money from enterprises under their control or which supported their aims. The result has been to force Al-Qaida, in particular, into a great variety of criminal activity chosen according to local conditions and opportunity. Some donor money is still believed to get through, but the non-profit organizations that provided the backbone of Al-Qaida financial support have been added to the List, and many have closed down. Whereas in the past, local groups might have received financial support from the leadership, this is no longer possible. Cells, offshoots or associated groups must now operate autonomously and finance their activities themselves.

68. As for the Taliban, recent evidence suggests they have access to more money. To prevent the country from sliding back into a safe haven for terrorists and warlords, the Government of Afghanistan and the international community must find ways to stop the renewed flow of funds to the Taliban and other terrorist groups.

1. Crime and terror

69. The Team believes that as the international financial sector continues to improve its rules and procedures, it has become more risky for Al-Qaida and other terrorist groups to move funds through banks without being detected. Consequently, the incidence of local criminal activity (which does not require bank transfers) as a means of raising terrorist funds will increase.

70. There are many accounts of Al-Qaida, the Taliban and their associates being involved in crime, particularly credit card and cheque fraud, illegal drugs trade, robbery, hostage-taking and the production of false identity documents. Jemaah Islamiyah, a listed entity in Indonesia, is just one example of a group that claims that robbing non-believers to finance its terrorism is justified.

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[36] Afghanistan (1 individual), Belgium (4), Bosnia and Herzegovina (2), Germany (6), Ireland (1), Italy (58), Kuwait (1), Malaysia (10), Morocco (1), Pakistan (2), the Russian Federation (1), Saudi Arabia (1), Sweden (1), Switzerland (3), Syria (2), the United Arab Emirates (1) and the United Kingdom (4). Note that the location of one individual is given in five States and three individuals are each indicated to be located in two States.

[37] Bahrain, Iran (Islamic Republic of), Japan, Norway, Portugal, Spain and Tunisia.

Box 1
Case Study

An example of the kind of crime unlikely to provoke much investigative reaction from law enforcement authorities is insurance fraud, and Al-Qaida and their associates have seen this as a potential source of revenue.

On 23 January 2005, Ibrahim Mohamed K. and Yasser Abu S. were arrested in Germany suspected of membership of Al-Qaida. It is alleged that Ibrahim Mohamed K. had attended Al-Qaida training camps up to November 2001 and had then stayed in Afghanistan for over a year fighting United States troops, during which time he had contact with high-ranking members of Al-Qaida. He was persuaded by them to return to Europe, where his German travel document gave him considerable freedom of movement to recruit suicide attackers.

By September 2004, he had recruited Yasser Abu S. for a suicide mission in Iraq. The two men then set about raising money. They took out insurance for over €800,000 on the life of Yasser Abu S., intending to pretend that he had died in a traffic accident in Egypt before he left for Iraq. The proceeds of the scam were to finance his travel and other terrorist activity.

Source: Public Prosecutor General at the Federal Court of Justice, Karlsruhe, Germany, January 2005.

71. The Monitoring Team recently received information about a law enforcement programme that monitors low-level criminal activity which may fund terrorism.[18] The programme collects information nationally on all persons who have been arrested or suspected of involvement in low-level bank or credit card fraud, or travel document offences. This information is compared against identified key indicators and shared within the financial community to help discover accounts opened using suspect identity documents. The programme receives leads from banks, as well as reports of false passports presented to social security offices and used in applications for driver's licences. A recent investigation uncovered a stockpile of chequebooks, credit cards and forged documents which had been used to obtain goods which could then be returned for cash. The programme has begun to note correlations and build profiles which may have relevance for other States, and the Team applauds the way the findings are being shared internationally.

[18] Presentation by Anti-Terrorist Branch, Metropolitan Police, United Kingdom, at the Interpol Project Fusion-Kalkan 1st Working Group Meeting, 20-21 April 2005, Almaty, Kazakhstan.

2. Drugs and terror

72. Much has been said about the financing of terrorism through drugs, including in international conventions and Security Council resolutions.[39] Such connections certainly exist, the most notable recent example being the financing of the Madrid train bombings of 11 March 2004. But national and international authorities have not uncovered a large number of cases where Al-Qaida and the Taliban have financed their operations in this way. Even in Afghanistan, although Afghan officials and members of the coalition forces have told the Team that they are convinced the Taliban benefit from the huge revenues generated by the drug trade, it is difficult to demonstrate concrete examples.[40] This is perhaps unsurprising given the secretive nature of the illegal drug trade, and the Team accepts the expert judgements that the Taliban benefit from drug revenues.

73. The dangers of a rampant drug trade in Afghanistan are not limited to the likely financing of the Taliban. It creates a general state of lawlessness that also increases the country's vulnerability to re-infiltration by Al-Qaida. The international community has already provided Afghanistan with much support and there may be scope to introduce measures that control the export to the country of precursor chemicals used in the manufacture of heroin.

3. Precious commodities and terrorist financing

74. The Team has found no examples of Al-Qaida or the Taliban using precious commodities to circumvent the assets freeze since its previous report (see S/2005/83, paras. 92-93). However, precious metals, stones and other natural resources can easily be held to store value or traded for weapons, services or goods. Less than half the 140 States that submitted reports under resolution 1455 (2003) said what steps they had taken to restrict or regulate the movement of precious commodities, and those that did generally referred only to controls under customs and taxation legislation.

75. The Kimberley Process certification scheme, established to counter "conflict diamonds", is helpful but is still hampered by inadequate controls on the ground.[41]

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[39] The International Convention for the Suppression of the Financing of Terrorism requires signatories to take steps to prevent and counteract the financing of terrorists, whether directly or indirectly, through groups which engage in illicit activities including drug trafficking. Security Council resolution 1373 (2001) acknowledges "the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering".

[40] The United States Drug Enforcement Agency, in a report to the House of Representatives in February 2004 (see www.mipt.org/pdf/House108-84-Afghanistan-Drugs-Terrorism-US-Security-Policy.pdf, pp. 15-20), acknowledged that despite its having been directed to assess the extent that terrorists were profiting from the drug trade in Afghanistan, "information regarding direct links between terrorist groups and activity and narcotics trafficking groups in Afghanistan at this time is generally uncorroborated or anecdotal. We know there are associations between the two groups and there is fertile ground for these sinister relationships to flourish. Raw intelligence and uncorroborated statements from confidential sources continue to indicate these relationships exist between drug traffickers and terrorist groups within Afghanistan. However, clear corroborated evidence of these sources has been very difficult to obtain because of the restrictions on our ability to conduct full law enforcement investigations in Afghanistan"

[41] Assessment of the European Commission expert on the Kimberley Process and the United Nations Panel of Experts on Liberia.

The Team believes that fuller participation in the Kimberley Process, and greater technical assistance from donors to provide training and improve controls in States where alluvial mining is carried out, or in neighbouring States where smuggling occurs, would help to suppress this easy means of transferring value by or to those on the Consolidated List, or other terrorists.

76. The effective regulation of the movement of gold and other precious metals also varies widely from region to region. Concerned initially about the opportunities for money-laundering, FATF has addressed this in its Forty Recommendations on money-laundering by including dealers in precious metals and precious stones in the definition of "designated non-financial businesses and professions". Dealers are therefore required to take measures to prevent money-laundering and terrorist financing by exercising customer due diligence, introducing know-your-customer rules, keeping records, reporting suspicious transactions and undergoing regulation and supervision procedures.[42]

77. The Team believes that at a minimum, all States should ensure that dealers in precious metals and stones adopt measures to prevent money-laundering and terrorist financing consistent with the requirements of FATF. States should also consider whether their systems to control and monitor the movement of precious commodities are adequate, making sure that the necessary cooperation and communication exists between the State and relevant non-State bodies.

D. Improving implementation of the assets freeze measures

78. Distribution of the Consolidated List to the official banking system is well established in the great majority of States, and financial institutions are aware of their obligations to freeze assets accordingly. There may still be some debate as to what constitutes an asset, but useful definitions are now available[43] and States can seek further guidance from the Committee on issues such as set-off,[44] joint accounts[45] and third party funds.[46]

79. Financial institutions should be alert to attempts to evade the sanctions through spurious transactions or by third parties acting on behalf of listed individuals or

[42] For a full description of the recommended requirements for dealers in precious metals and stones, see the FATF Forty Recommendations at www.fatf-gafi.org.

[43] For example, the European Union and Interlaken Process have included the following in the definition of financial assets and economic resources: cash, cheques, claims on money, money orders and other payment instruments, deposits with financial institutions, balance on accounts, debts, debt obligations, securities, debt instruments including shares, stocks, certificate representing securities, bonds, warrants, debentures, derivatives contracts, interest, dividends or other income on or accruing from or generated by assets, credit, right of set-off, guarantees, performance bonds or other financial commitments, letters of credit, bill of lading, bill of sale, documents showing an interest in funds or financial resources, any other instrument of export financing, trade goods, office equipment, jewellery, insurance money, paintings, motor vehicles, ships and aircraft.

[44] One Member State asked if a bank could recover the debt of a listed individual from a frozen account.

[45] One Member State informed the Team that it had frozen a mortgage account jointly held by a listed individual and his wife, who is not listed.

[46] One Member State said that as a result of the freezing of the assets of the listed entity Al Barakaat, unlisted depositors could not gain access to their savings or uncollected remittances.

entities. In order to lower the risk that third parties may act unwittingly in this respect, States should endeavour to publicize the List and its purpose as widely as possible, such as in government journals or via the Internet.[47]

1. Reducing the risk of terrorist financing by operational entities

80. Although the intention of the assets freeze is to prevent the financing of terrorism, an entity will be effectively unable to carry out any operations once it is listed. States sometimes express confusion about this and try to distinguish between the innocent and the suspicious activities of an entity. But the obligation on States is clear; they must impose the assets freeze in full. If they believe that this has unintended consequences, they should approach the Committee for guidance.

81. The Team believes that, depending on the circumstances, there are several potentially effective ways to prevent the abuse of the assets of a suspicious (but unlisted) entity, for example, removing individuals suspected of wrongdoing, or those on the Consolidated List, from positions of control or influence;[48] prohibiting the transfer, sale or other disposal of their interests; and prohibiting entities from making any transfers of assets to such individuals, whether in their capacity as owners or directors. An entity may also be put into receivership, with control passing temporarily to another person.

82. Saudi Arabia has provided two useful examples of effective action: Osama bin Laden's share of the family business was sold, and the proceeds placed in a frozen bank account,[49] and in the case of Al-Haramain Islamic Foundation, the Government announced that the charity would be dissolved and its assets and operations would be transferred to a non-governmental body responsible for the distribution overseas of all private charitable donations from Saudi Arabia.[50]

83. It is unclear how States that have frozen the assets of listed entities have dealt with parties who hold contracts with such entities, such as creditors, debtors, employees and joint owners. If a State is concerned that application of the measures may have resulted in undue penalty to third parties, or third parties have complained that this is the case, the Team believes the State should bring this to the attention of the Committee.

2. Preventing abuse of non-profit organizations

84. The List includes 17 non-profit organizations or charities which together had approximately 75 operations spread over 37 States. The most widespread were Global Relief Foundation, present in 20 States, Benevolence International

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[47] As is done by, for example, Australia, Ireland, the United Kingdom and the United States.

[48] The Charity Commission for England and Wales informed the Team that because the primary objective of the Commission is to protect donors and beneficiaries it requests resignation of charity trustees and where replacements cannot be found at short notice, an independent firm of accountants is appointed to run the charity in the interim.

[49] Report submitted by Saudi Arabia on implementation of Security Council resolution 1390 (2002) (S/AC.37/2002/31); Monograph on terrorist financing released by the National Commission on Terrorist Attacks upon the United States (the 9/11 Commission), at www.9-11commission.gov/staff_statements/index.htm, p. 20.

[50] Royal Embassy of Saudi Arabia in Washington, D.C., press release, "Saudi Arabia tightens control on charity abroad", 2 March 2004, at http://saudiembassy.net/2004News/Press/PressDetail.asp?cYear=2004&cIndex=192.

Foundation, present in 18, and Al-Haramain, present in 13. Together they accounted for 51 (68 per cent) of the 75 operations recorded. Of the 10 new listings of non-profit organizations since the passage of resolution 1526 (2004) on 30 January 2004, 9 reflect a continuing crack-down on Al-Haramain Islamic Foundation's worldwide network, and the other was linked to Global Relief Foundation.

85. While it is clearly important to continue to identify those non-profit organizations that offer financial support to Al-Qaida, and close down operations that are set up to do so, the Team believes that care must be taken to ensure that any consequent suspension of genuine charitable work does not cause resentment and hardship that can be exploited by Al-Qaida to increase its support.

86. When a State lacks the resources required to maintain projects such as orphanages, clinics or refugee camps managed by a listed entity, it may not want to take action against it. In this case, the State must implement the sanctions, but could immediately contact the Committee to explain the humanitarian consequences and seek guidance.

87. Official oversight of charities appears often to depend on their receipt of public money, whether through tax exemption or by direct grant; or may apply only to the largest bodies. Lack of capacity may also be a factor. Ideally, States should have in place comprehensive systems to ensure that all charitable donations reach their intended, legitimate targets. Private sector watchdogs may help this process. Close coordination between the authorities in States where charitable funds originate and those where the projects are carried out is also a useful way to limit the misdirection of funds.

88. International concern at the abuse of charities has led States to take measures such as providing technical assistance to other States to improve corporate governance and regulation in the charity sector;[51] requiring that charitable assistance abroad be provided in kind (such as goods and services) rather than money to reduce the risk of the diversion of donations;[52] establishing a body to assume responsibility for all overseas charitable activity and requiring case-by-case Government approval for donations abroad in addition to notifying the recipient State;[53] and issuing guidelines for charities within its jurisdiction in respect of governing structure, financial transparency and accountability as well as anti-terrorist-financing procedures.[54]

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[51] The United Kingdom, through the Charity Commission for England and Wales, offers technical assistance to selected States in the Middle East, South East Asia and sub-Saharan Africa to help recipient States to strengthen governance in the charitable sector using the United Kingdom system as a model.

[52] Information provided to the Team by the United Arab Emirates.

[53] Royal Embassy of Saudi Arabia, op. cit., and information provided to the Team by officials in Saudi Arabia.

[54] United States Department of the Treasury, "Anti-Terrorist Financing Guidelines: Voluntary Best Practices for US-Based Charities", November 2002, at www.treas.gov/press/releases/docs/tocc.pdf.

E. Alternative/informal remittance systems

1. Preventing abuse through registration or licensing

89. Although there are relatively few known examples of the use of alternative or informal remittance systems[55] by Al-Qaida, the Taliban or their associates, these methods of moving money are vulnerable to abuse by terrorists and other criminals. Without mechanisms to identify such remittance systems operators, their locations, the remitters and recipients of the funds, or the mode of settling balances between operators, prevention of such abuse is almost impossible. The Team therefore endorses FATF Special Recommendation 6, which requires registration or licensing of all persons operating alternative remittance systems,[56] to whom the other relevant 40 Recommendations should then apply, with penalties for non-compliance.[57]

90. Some States have initiated registration or licensing regimes for alternative remittance systems, or plan to do so.[58] It will be hard to measure their success, given the lack of data on both the amount of remittances and the number of operators, but the number of registrations or licences issued will be a fair guide. The regulatory authorities of some States have initiated programmes to detect unregistered or unlicensed alternative remittance activity.

91. In some States informal remittance systems are neither regulated nor illegal, but in these cases their laws generally apply only to money transfers made from or to accounts maintained at banks and do not cover informal money transfers. Many States may therefore need to amend their laws to bring informal remittance systems under regulation. Other States have given their regulatory authorities the right to designate informal transfer systems as regulated funds transfer systems, or as financial services, in order to establish supervisory authority over them.[59]

2. Hurdles in converting informal remittance systems to formal systems through registration or licensing

92. There are different approaches to the problem, particularly between remittance-source States and remittance-receiving States. For example, informal systems, while registered in some States, are unlicensed or banned altogether in others. In some, registration or licensing is mandatory, in others it is voluntary. Some systems operate publicly, others do not. In some States individuals may be

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[55] The Team makes no distinction between alternative and informal remittance systems for the purposes of this report.

[56] FATF defines licensing as the requirement to obtain permission from a designated competent authority in order to operate a money/value transfer service legally; registration means a requirement to register with or declare to a designated competent authority the existence of a money/value transfer service in order for the business to operate legally.

[57] For example, FATF recommendations relating to customer due diligence, record-keeping, suspicious transactions, anti-money-laundering controls/policies and staff training.

[58] International Monetary Fund, "Approaches to a Regulatory Framework for Formal and Informal Remittances Systems", 17 February 2005 (www.imf.org/external/np/pp/eng/2005/02175.pdf), records registered/licensed remittance systems in some countries such as Germany (43), the Netherlands (30), Switzerland (200), the United Arab Emirates (108), the United Kingdom (1,500) and the United States (22,000).

[59] Australia's Payment System (Regulation) Act, 1998, section 11, gives the Reserve Bank the power to designate a payment system if it considers that to do so is in the public interest.

permitted to operate such systems, whereas in others only incorporated entities may act as banks or non-bank financial institutions.[60]

93. Overly restrictive or burdensome regulation of alternative remittance systems[61] may drive them further underground, thus robbing the process of its value; the challenge is to judge at what point regulation becomes excessive.

3. Additional measures to prevent the abuse of informal systems

94. The more attractive the formal banking system, the less people will use alternatives, and this complementary approach to regulation has much to recommend it. There would be fewer informal systems, and those remaining would have to be less secretive to compete for business with regulated remittance service providers, so allowing more scrutiny by authorities. Some States and private sector entities have begun to address the factors that deter people from using formal banking systems, for example by abolishing overelaborate customer verification practices which make it difficult for customers to open bank accounts; reducing fees for money transfers;[62] removing minimum balance requirements; and increasing the availability of bank services, as well as addressing stringent bank licensing requirements.[63]

95. It is encouraging that 90 States have formed, or are in the process of forming, national committees to coordinate activities under the International Year of Microcredit 2005, which aims to remove the constraints responsible for the exclusion of the majority of the poor and low-income sections of the global community from accessing financial services.[64]

Box 2

Banking the unbanked through "Mzansi" accounts

Early in 2005, officials of ABSA, one of the four largest banks in South Africa, told the Monitoring Team how, with three other banks, ABSA aimed to increase the number of people accessing formal banks through Mzansi accounts, which are first order entry basic bank accounts intended for about 17.8 million low-income South Africans who have

[60] For example, the Netherlands, Switzerland, the United Arab Emirates, the United Kingdom and the United States.

[61] For example, audit, entry and annual fees, tax on business profit, prudential requirements such as minimum capital, bank guarantee and minimum managerial experience as required in some States.

[62] For example, Saudi Arabia informed the Team that it has designated certain bank branches for remittances at reduced fees.

[63] The Central Bank of the United Republic of Tanzania informed the Team that proposals under the Financial Sector Deepening Program include reducing the required start-up bank capital to about $20,000 for banks setting up outside urban areas and their surrounds. The Team has also learned that the Monetary Authority of Singapore has made changes to its regulatory policies in order to promote the use of the formal banking sector for money transfers from Singapore to other countries. Under the new rules, the Monetary Authority now recognizes limited purpose bank branches at which a limited range of services is offered. In order to reduce the operating costs incurred by banks providing remittances, the fee payable to the Monetary Authority for a limited purpose branch licence is significantly lower than the fee for a full service branch.

[64] An initiative promoted by the United Nations Capital Development Fund and the Department of Economic and Social Affairs of the Secretariat.

never before used banks. The Mzansi programme is supported by the Government of South Africa through incentives offered to financial institutions under the financial sector charter. Mzansi accounts attract little or no bank charges and require no minimum balance, although there is a maximum account balance of about $2,300 and a limit on the number of transactions permitted, so as to cap operating costs. By the end of June 2005 over one million Mzansi accounts had been opened in little more than six months. Brochures for Mzansi accounts are printed in English and six local languages. The Team also learned that ABSA, through its subsidiary AllPay, enables some two million people in 10 provinces where the bank has no presence to open and service accounts without having to go to a branch, and to access their money remotely through mobile automated teller machines. The Team has also been informed that under the second phase of Mzansi, to be launched in August 2005, individuals will be able to send or receive funds without the need for a bank account.

VII. Arms embargo

A. Overview

96. The Monitoring Team has examined the implementation of the arms embargo with reference to the methods used by Al-Qaida and the Taliban when mounting their attacks. Terrorist methods have changed since the Security Council introduced the arms embargo, and in order for it to remain an essential part of an effective and concerted international response to the Al-Qaida and Taliban threat, the Team believes the embargo should be developed to widen its scope and increase its enforcement.

97. An important Al-Qaida and Taliban objective is to influence opinion through the media. The higher the casualties, or the more dramatic their attacks, the greater the media coverage is likely to be. To achieve their aim, Al-Qaida and the Taliban would prefer to use weapons or materiel that have been designed for military purposes, although commercial, dual-use materiel can also be relatively effective, as can improvised weapons. An important consequence of the arms embargo should be to force them to use less efficient equipment, or run a real risk of discovery trying to procure the more effective means they would prefer (see annex IV to the present report).

98. Several factors limit Al-Qaida and the Taliban's use of military equipment; these include arms control measures, market availability, the risks of acquisition, the costs[65] and the need for expertise and training. Clearly these constraints are much less evident in areas of conflict, or where there is a lack of government control, but where laws are enforced, the terrorists must find alternative ways to procure the

[65] The cost of arms is often low compared to the overall logistical costs of terrorist attacks, but as mission-critical components, they usually have funding priority. Those responsible for the Madrid bombings of 11 March 2004 spent under 10 per cent of their available funds on explosives.

necessary materials without detection. For example, the Al-Qaida cell that carried out the November 2003 bombings in Istanbul originally planned to rent a stone quarry in order to obtain dynamite legally, though they later abandoned this plan and used improvised explosives instead.[66]

99. While opinions may differ as to the likelihood of their success, it is clear that Al-Qaida and its associates aspire to mount attacks of mass casualty using chemical, biological, radiological or nuclear materials, in part because of the added psychological impact. The international community is making a special effort to counter this threat and the Team believes that the arms embargo can play an important part.

100. Although they are not specifically designed to deal with terrorism, there is now a wide range of internationally agreed standards that have been developed through work on arms control and counter-proliferation.[67] Many of these standards cover the broad areas of the Al-Qaida/Taliban arms embargo, and if its provisions were specifically mentioned in the various protocols, guidelines and technical documents that have been agreed, it would help States to attain better and more uniform implementation. Many counter-terrorism experts, international organizations and agencies also believe that it is important to control commercially available dual-use systems and components which could be used in terrorist attacks.

101. While the effective implementation of the arms embargo may not prevent Al-Qaida and Taliban operations altogether, it can be successful in forcing them to operate in ways that are less devastating, more complicated and therefore less likely to succeed. Effective implementation requires an internationally concerted response, in particular to the threat of a chemical, biological, radiological or nuclear attack. The Team believes that the embargo could have more impact against this and other high-priority threats, such as the use of man-portable air defence systems, if it were tied more tightly into other counter-proliferation and arms control regimes.

B. Monitoring Team activities related to the arms embargo

102. The Team has analysed the implementation of the arms embargo in three stages. It has reviewed the existing legal regimes and enforcement capacity of Member States; whether the Al-Qaida/Taliban arms embargo has been properly integrated into national laws; and finally, how States have enforced the embargo in practice.

103. The Team assessed the 140 reports submitted by States pursuant to resolution 1455 (2003) and concluded that most States have measures to regulate the trafficking, acquisition, storage and trade in arms, although not all have provisions to cover arms brokering. Also, most reporting States indicated that they have incorporated the measures designed to prevent the acquisition of arms by Al-Qaida and the Taliban within their existing legislation. But States have not provided much detailed information on enforcement measures. Furthermore, 106 States (76 per cent) made no reference to the Consolidated List in describing their regulatory

[66] Sources at the Southeast European Cooperative Initiative Anti-Terrorism Task Force.

[67] For example, the IAEA Code of Conduct on the Safety and Security of Radioactive Sources (IAEA/CODEOC/2004) and the IAEA document on the Prevention of the Inadvertent Movement and Illicit Trafficking of Radioactive Materials (IAEA-TECDOC-1311).

processes, though all seemed confident that their existing laws would apply equally to those listed.

104. The Team also notes that States have interpreted the scope of the arms embargo in different ways, and not all have integrated it fully into their arms control measures. For example, even States that control firearm purchases have not always added the Consolidated List to their national watch-lists.

105. No State reported any attempt to breach the arms embargo to the Committee, but the Team has noted several situations where the effective implementation of the arms embargo is complicated by factors such as the presence of entities associated with Al-Qaida in a post-conflict region or in areas beyond government control, for example in Somalia and Afghanistan.

106. The Team has consulted the Monitoring Group on Somalia, which stated in its report of 9 March 2005 (S/2005/153) that the arms embargo has been breached by the provision of arms, explosives, related materiel and military training to Al-Itihaad Al-Islamiya, an entity on the Consolidated List. Two listed members of the organization's leadership, Sheikh Hassan Dahir Aweys and Hassan Turki, are cited as parties to these arms deals (see annex VI to the present report). Furthermore, during the Team's visit to the Sudan, official information was provided about groups associated with Al-Qaida smuggling arms through Eritrea to Al-Qaida elements in Saudi Arabia.

107. In Afghanistan the Taliban have continued to mount large-scale attacks, such as in Khost in April 2005 when some 150 Taliban mounted simultaneous attacks against five targets.[68] Even though a large quantity of arms has been collected under the Government's disarmament, demobilization and reintegration programme, there are many still available. But these will need replacing with more modern ones and this will cost money, so a properly implemented arms embargo, combined with effective financial sanctions should, over time, decrease the Taliban's ability to sustain its operations.

C. Improving the arms embargo

1. Scope of the arms embargo

108. During the Team's visits to Member States and meetings with organizations, officials have commented that in order to have a real effect on the individuals and entities on the Consolidated List, the arms embargo should have a clearer definition of its scope.

(a) Chemical, biological, radiological and nuclear terrorism

109. The threat of chemical, biological, radiological and nuclear terrorism (see annex V to the present report) is increasingly recognized as credible and has been highlighted in many international initiatives and meetings.[69] The Secretary-General

[68] Briefing by official sources during the Team's visit to Kabul in April 2005.

[69] Specialized agencies such as IAEA, the Organization for the Prohibition of Chemical Weapons and Interpol have included countering terrorist use of chemical, biological, radiological and nuclear devices in their workplans.

has repeatedly called for an effective response to the threat;[70] the High-level Panel on Threats, Challenges and Change emphasized it in its report (A/59/595); the General Assembly recently adopted the International Convention for the Suppression of Acts of Nuclear Terrorism (resolution 59/290, annex); and the Security Council adopted resolution 1540 (2004), which addresses the acquisition of weapons of mass destruction, their means of delivery and related materials by non-State actors such as those on the Consolidated List. Chemical, biological, radiological and nuclear terrorism also warranted inclusion in the International Convention for the Suppression of Terrorist Bombings.[71]

110. Some observers remain unconvinced of the significance of the threat, and others criticize the prioritization of chemical, biological, radiological and nuclear threats over other aspects of terrorism or types of threat. But the Team believes that there is sufficient risk of this type of terrorism, with such appalling consequences, that the Security Council may wish to review the scope of the arms embargo to ensure that it is fully covered.

111. The Team has discussed with counter-terrorism experts the next steps that Al-Qaida and its associates might take towards a mass-casualty attack and concludes that they may aim to release a virulent bacterium, virus or toxin, or claim to have done so in order to cause panic and generate publicity, or to detonate a radiological dispersal device (or "dirty bomb") in a place likely to attract wide media attention, such as the centre of a large city, an airport, sports stadium, theatre or similar public location.

112. The limitations remain the expertise necessary to manufacture and deliver such a device, though a radiological dispersal device would be easier than other forms of chemical, biological, radiological or nuclear attack. Al-Qaida manuals and publicly available information, including on the Internet, offer some degree of theoretical guidance, while practical training was provided in Afghan camps prior to 2001. The Consolidated List includes the name of one nuclear scientist, Mahmood Sultan Bashir-Ud-Din;[72] however it is quite possible that there are several unlisted Al-Qaida supporters who have technical knowledge or access to materials that would allow the preparation of a feasible chemical, biological, radiological or nuclear attack.

(b) Conventional arms

113. On the basis of its overall analysis, the Team also believes that the Council may wish to request all States, in particular arms-exporting countries, to exercise the highest degree of responsibility in small arms and light weapons transactions to

[70] See, for example, the Secretary-General's address to the General Assembly, 1 October 2001 (A/56/PV.12) and his report "In larger freedom: towards development, security and human rights for all" (A/59/2005, paras. 80-105).

[71] Under the terms of its articles 1 and 2, the Convention covers, inter alia, "a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents, or toxins or similar substances or radiation or radioactive material".

[72] United Kingdom House of Commons, "Review of Intelligence on Weapons of Mass Destruction: Report of a Committee of Privy Counsellors", 14 July 2004, para. 129, at http://download.ukonline.gov.uk/butler-report.pdf.

prevent illegal diversion and re-export of arms and related materiel, in violation of the measures contained in the Al-Qaida/Taliban-related resolutions. These measures should most urgently be applied to arms such as man-portable air defence systems and high-explosives that enable Al-Qaida to carry out large-scale operations.

2. Territory of the embargo

114. Although a traditional arms embargo in design, the Al-Qaida/Taliban sanctions regime applies to non-State actors and is not restricted to the territory of any specific country or region. This complicates implementation and makes it more difficult to enforce. However, the Taliban are bound to one geographic area and their procurement needs are, on the whole, for conventional military weapons systems. Also, much of the money needed to buy arms in Afghanistan originates, in one way or another, from poppy cultivation and the burgeoning drug trade, which in itself creates a market for arms.

115. The current embargo could have more effect on the Taliban if it took this into account and if all non-State actors in Afghanistan were prevented from buying weapons, with necessary exemptions for humanitarian and other purposes, as authorized by the Government of Afghanistan or the Security Council.

VIII. Travel ban

116. The Monitoring Team continues to regard the travel ban as an important sanctions measure against Al-Qaida and the Taliban, but notes the ingenuity shown by terrorists who attempt to cross national borders undetected. Member States have introduced many innovative ways to stop them doing so, but the Team believes that more can and should be done to stop terrorists in their tracks.

A. Overview

117. Travel bans have been used as a sanctions measure for nearly 40 years,[73] but the Al-Qaida/Taliban travel ban is unique in its scope. Other sanctions programmes have generally targeted only a small ruling group in one country, therefore limiting the need for vigilance to a few borders. Enforcement of those bans has also benefited from the public notoriety of the subjects, which makes them more recognizable and less likely to travel under a false identity.

118. However, the Al-Qaida/Taliban sanctions regime covers 325 individuals (and 116 entities), and while the 143 individuals on the Taliban list are most likely to be in Afghanistan and neighbouring areas, the 182 individuals on the Al-Qaida list are spread all over the world, and include names and faces that are not ordinarily recognizable to the public, police or border guards. As many of these men are

[73] Travel bans have been imposed in 12 of the 16 Security Council sanctions regimes: Southern Rhodesia (1968), Libya (1992), Haiti (1994), Yugoslavia (1994), the Sudan (1996, 2005), Iraq (1997), Angola/UNITA (1997, 2000), Sierra Leone (1997, 1998), Liberia (2001, 2003, 2004), Côte d'Ivoire (2004) and the Democratic Republic of the Congo (2005), as well as the Al-Qaida/Taliban sanctions programme. Besides the Al-Qaida sanctions, travel bans continue to be imposed pursuant to the sanctions involving Côte d'Ivoire, the Democratic Republic of the Congo, Liberia, Sierra Leone and the Sudan.

wanted terrorists, they are likely to try to conceal their identities when travelling, making the task of enforcing the ban much more problematic.

119. Faced with this situation, the Team has undertaken several initiatives to fulfil its mandate of monitoring the travel ban and proposing recommendations for improvement. These include increased interaction with Member States and major international organizations; an investigation into the use of false travel documents by terrorists and ways to improve national and international systems; regular discussions with Interpol on ways to enhance coordination between the United Nations and Interpol; an exploration of the emerging trend of visa-free and freedom-of-movement zones and their interrelation with United Nations sanctions; and the relationship of refugee and asylum practices to United Nations counter-terrorism efforts.

B. Member State viewpoints

120. Nine more Member States have reported in accordance with resolution 1455 (2003) since the Team last analysed the implementation of the travel ban (see S/2004/1037, note 2). The picture remains encouraging, with 92 per cent of the 140 reporting States indicating they had the legal means in place to enforce the travel ban and only 7 per cent — or 11 States — conceding they lacked adequate legislation. Many States reported having adopted new legislation or regulations, others had revised previous rules, and the remainder reported they could enforce the sanctions under their existing legislation.

121. But having the requisite legal machinery in place is not enough to guarantee effective implementation of the sanctions. The main problem faced by States continues to be the lack of identifying information for many individuals on the List, which seriously hinders the ability of their border guards and other officials to ensure proper enforcement. While much progress has been made, the Team repeats its prior recommendation (S/2005/83, para. 134) that the Council and the Committee should do everything within their power to get States to submit additional identifying information for these names.

122. States also continue to seek guidance on the scope of the travel ban, such as what to do if they find that a listed person has arrived within their borders. The Team still believes that additional guidance should be provided, such as requiring States to cancel any visas or residence permits of non-nationals on the List who are found to have travelled to a State after their listing and to return them either to their country of nationality or to the State whence they came, subject to certain exceptions. The Team also continues to propose that States generally be required to submit updated information when they locate listed persons within their territory, so this information can be shared and perhaps added to the List (original recommendations in S/2005/83, paras. 49 and 124).

C. Travel documents

123. The sophisticated and widespread use of a combination of false, forged and stolen documents by listed terrorists who wish to conceal their identity and/or profile presents a significant hurdle to applying sanctions against them. It is also likely that Al-Qaida will emulate other criminals in their increased use of identity

theft. Altered, forged or stolen documents such as passports, identity cards and driving licences are frequently used to facilitate terrorist activity at a multitude of levels, for example to open bank accounts, rent property, activate mobile telephones and utilities, and to facilitate travel.

124. An example of the convergence between the activities of criminal and terrorist groups when it comes to the procurement of false identities and travel documents can be seen in the case of three individuals on the Consolidated List[74] who were acquitted in Italy in May 2005 of terrorist conspiracy charges but found guilty of lesser charges relating to the possession of false documents. A further individual,[75] also listed, was cleared of all charges. All four were arrested in late 2002 and accused of providing Al-Qaida members in Europe and the Middle East with financial and logistical support, particularly the provision of false documentation.

125. While Internet-based information sources and advances in counterfeiting technology present opportunities for those seeking to develop or obtain forged documentation, stolen passports offer a convenient and potentially more secure means to terrorists, particularly those seeking to cross international borders. Accordingly, national and international efforts must target the acquisition and use of both fraudulent and stolen travel documents. Some notable progress has been made in these areas.

126. An increasing number of States plan to incorporate biometric measures[76] into newly issued passports, both to improve the security of travel documents and to comply with the planned introduction of biometric identifiers as a precondition for facilitated or visa-free travel in the future.[77] Given that these measures target a worldwide problem of terrorist or other criminal use of false documents, the Team believes it is crucial that measures introduced on a national basis can be applied internationally and that States agree on the introduction of a globally interoperable system. While any scheme is vulnerable to insecure issuance systems, and although it may take time to phase out old-style travel documents, adherence by States to internationally agreed specifications, such as those that the International Civil Aviation Organization is currently drawing up,[78] will ensure that the maximum benefit flows from the use of biometric technology against those it seeks to target, including those on the Consolidated List.

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[74] Cherif Said Ben Abdelhakim, Saadi Nassim and Lazher Ben Khalifa Ben Ahmed Rouine.

[75] Bouyahia Hamadi.

[76] Biometric systems allow the electronic integration of unique personal biodata into travel documentation as an enhanced security and identification measure which can be checked at immigration control points. The three main biometric identifiers under appraisal for incorporation into passports are facial recognition, fingerprinting and iris scanning (see www.icao.int/mrtd/biometrics/intro.cfm).

[77] Some of the countries that have introduced, are planning to introduce (subject to necessary legislative amendments), or that have carried out trials involving biometric passports include European Union members (europa.eu.int/idabc/en/document/4288/194), the United States (www.state.gov/m/irm/rls/43047.htm), Australia (www.ag.gov.au/agd/WWW/budgethome2005.nsf/Page/Media_Statements), Canada (www.pptc.gc.ca/faq/index_e.asp#735), Japan (www.mofa.go.jp/policy/i_crime/people/action.html), Singapore (http://app.ica.gov.sg/pressrelease/pressrelease_view.asp?pr_id=254), the United Arab Emirates (http://82.195.132.90/news/default.asp?ID=5) and other Gulf States.

[78] See www.icao.int/mrtd/biometrics/reports.cfm.

127. Interpol has seen an encouraging rise in the number of States contributing to its stolen and lost travel documents database, from 54 six months ago to 75 as of June 2005. The database now holds details of 7.1 million stolen and lost travel documents, including 550,000 blank documents.[79] But well over 100 United Nations and Interpol Member States still do not participate in this international database; and the reported loss of over half a million blank travel documents suggests that national Governments may need to reassess their security precautions to ensure that passports and similar items do not fall into the wrong hands.

128. Another method favoured by Al-Qaida is the recruitment and deployment of operatives who have not come to the notice of any law enforcement or security agency and may therefore travel without difficulty, obtain business or student visas[80] and, as a further safeguard, claim the loss of any documentation containing potentially incriminating visa stamps to obtain a pristine replacement. Examples of such "clean-skins" are the 11 September hijackers Mohammed Attah, Marwan Al-Shehhi and Ziad Jarrah[81] and, more recently, the would-be shoe bombers, Richard Reid and Sajid Badat.[82]

129. Another method which may be employed by terrorists to obtain a legitimate passport, or other forms of identification under a new identity, is the manipulation of official processes such as legal changes of name, marriages of convenience and by arriving in a State without documents and registering under a false name. In this way, individuals can sever links between their new and old identity, making them difficult to trace.

130. The Team recommends that States be encouraged to improve or adopt measures to deal with these types of evasion of the travel ban. Such measures could include, for example, a requirement that individuals applying for a new passport must provide details of any previous identities and travel documents under those names, and mandatory monitoring (with possible referral to law enforcement) of cases of repeat passport requests by individuals.

D. Interpol

131. In the Team's view, the increasing cooperation between Interpol and the Committee offers exciting opportunities to heighten implementation of the sanctions measures and to promote international counter-terrorism efforts. The Committee reacted favourably to the Team's earlier recommendations concerning cooperation with Interpol (S/2005/83, paras. 127-130 and 138-142), and the Team believes the

[79] This information was obtained from Interpol officials and the Interpol Internet site, www.interpol.org.

[80] As in the case of a number of the 11 September hijackers (see the 9/11 Commission report, p. 168, at www.9-11commission.gov) and Dhiren Barot, who faces charges of surveilling financial targets in the United States in 2001 for terrorist purposes (see www.usdoj.gov/criminal/press_room/press_releases/2005_3952_2_pr-ChrgWponFMass DstrctConsp041305.pdf).

[81] 9/11 Commission report, notes 5/94 and 5/108, at www.9-11commission.gov/report/911Report_Notes.pdf.

[82] Details on the Reid case may be found at www.fbi.gov/congress/congress03/mefford062703.htm and of the Badat case at http://cms.met.police.uk/met/layout/set/print/content/view/full/656.

United Nations and Interpol are well placed to offer significant support to each other's mandate against terrorism.

132. As the Committee and Interpol determine the best way to move forward, the Team hopes that the Interpol database may provide additional identifying information on persons on the Consolidated List. A preliminary check by Interpol has revealed 113 possible matches between individuals on the Interpol database and those on the List, as well as 49 possible matches of groups. The Interpol database, which is accessible to all its Member States, offers a potential reservoir of relevant identifying information that may reduce the difficulties some States have in implementing the sanctions. An exchange with Interpol would also allow the United Nations to supply Interpol with data on individuals and entities associated with Al-Qaida and the Taliban, thus enhancing Interpol's global law enforcement and investigative capabilities.

E. Freedom of movement zones and visa-free zones

133. The Team has previously drawn attention to the freedom of movement and visa-free zones in various stages of development across the globe and the implications for the travel ban, in particular the travel ban's directive that States prevent listed persons from entering their territories, unless in certain special circumstances (S/2005/83, paras. 135-137).

134. Virtually every continent has some sort of freedom of movement and/or visa-free zone, most of which originated or still exist on the principle of free trade. For example, Europe has the European Union (EU) and the Schengen Agreement;[83] Africa, the Economic Community of West African States (ECOWAS)[84] and the Southern African Development Community (SADC);[85] Asia, the Association of Southeast Asian Nations (ASEAN)[86] and the Commonwealth of Independent States (CIS);[87] North America, the North American Free Trade Agreement (NAFTA);[88] Central America, the Central American Integration System (SICA);[89] and South America, both the Andean Community and the Common Market of the South (MERCOSUR), which are moving towards a merger to create the South American Community of Nations.[90]

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[83] The European Union has 25 member States, while the Schengen Agreement covers 13 EU and two non-EU member States (see S/2005/83, para. 135 and note 97). The Swiss agreed by referendum on 5 June 2005 to join the Schengen Agreement (see www.europa.admin.ch/nbv/referendum/e/).

[84] ECOWAS is a regional group of 15 West African countries; see www.sec.ecowas.int/sitecedeao/english/member.htm.

[85] SADC encompasses 13 African States; see www.sadc.int/index.php?action=a1001&page_id=member_states.

[86] Ten countries are members of ASEAN; see www.aseansec.org/74.htm.

[87] CIS has 12 members; see www.cisstat.com/eng/#cis.

[88] NAFTA is an agreement between three countries; see www.nafta-sec-alena.org/DefaultSite/index_e.aspx?ArticleID=282.

[89] SICA has seven Member States. See www.sgsica.org/miembros/miembros.html.

[90] The Andean Community has five member countries (see www.comunidadandina.org/ingles/who.htm); MERCOSUR has four (see www.sice.oas.org/trade/mrcsr/TreatyAsun_e.ASP). In December 2004, a merger of the two groups was announced, with the intent to create a South American free trade area consisting of those nine countries, plus three others; see www.comunidadandina.org/ingles/document/cusco8-12-04.htm.

135. As these zones develop, some have expanded beyond the simple principle of free trade to the corollary principle of greater freedom of movement for persons within the zone and enhanced uniformity of controls on persons outside the zone. The Team noted in its second report (S/2005/83, para. 135) that the European Union, as the most developed of these zones, guarantees its citizens freedom of movement within the territory of its 25 member States, while the Schengen Agreement eliminated border controls between many of the European States while strengthening controls at the external Schengen area border and increasing police and judicial cooperation within the Schengen system.

136. Since the Team's second report, the European Union and Schengen member States have continued to discuss the matter with Committee members and the Team in meetings in Brussels and at a European Union seminar in New York. The European Union has pointed to a number of initiatives that it implemented on a collective basis that have strengthened regional and international counter-terrorism efforts, and the Team acknowledges that many of these measures may serve as examples of best practices of value to other freedom of movement and visa-free zones.[91]

137. In addition, EU member States have explained some of the initiatives they employ at the national level to implement the travel ban. Denmark, for example, as a member of the Schengen Agreement, applies the stringent security controls adopted by all Schengen member countries for those entering the Schengen zone, which include a requirement that no United Nations-listed person from another country enter the region. In addition, Denmark enters the name of all United Nations-listed persons with sufficient identifying information, whether from a Schengen or non-Schengen State, on the Danish criminal register with a permanent prohibition to enter the country. This information is instantly accessible for Danish police, including personnel at the borders. Any non-Dane found within the country's borders may be expelled from Denmark if deemed a danger to national security or a serious threat to the public order, safety or health of Denmark.[92]

138. Many other EU countries appear to have similar laws. Greece, for example, also participates in the Schengen system to implement internal and external controls for the region. Persons on the Consolidated List, whether or not from another EU or Schengen State, are barred from entry into Greece. If any non-Greek on the List is located and arrested by police authorities within the country, he would be extradited to his country of origin, based on presidential decrees issued in 1983 and 1987 authorizing administrative extraditions of non-nationals in cases involving public health or security.[93]

139. This two-part approach — utilizing Schengen-wide restrictions to exclude listed persons from outside the Schengen zone, while maintaining national restrictions to limit the movement of listed aliens within the zone — may serve as a model for other States in established or developing border-free or visa-free regions.

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[91] The European Union recently adopted additional measures relevant to the travel ban, including enhanced security measures and information-sharing for persons on short-stay visas and residents of border areas; see European Commission press releases MEMO/05/59, 24 February 2005 and IP/05/10, 7 January 2005, available through http://europa.eu.int/rapid.

[92] See S/AC.37/2003/(1455)/8, paras. 16 and 17. The Team clarified certain matters with Danish officials.

[93] Based on information provided by Greece.

This furthers the competing goals of allowing greater freedom of movement for persons within a multinational territory, while adhering to the language and purposes of Security Council resolutions that forbid the entry of listed non-nationals into individual States.

140. No other freedom of movement or visa-free zone has developed to the same extent as the European Union or Schengen, and the other zones do not appear to curtail the ability of individual States to control their borders with neighbouring States that are also within that zone. Officials from organizations and States belonging to the other zones have assured the Team that their systems currently do not affect the ability of member States to prevent the entry of listed persons, even if already within the zone.[94]

141. In the Team's view, the fundamental question that the Council, the Committee and participating States of regional zones should consider is how best to reconcile the laudable goal of expanding freedom of movement with the equally important principle that States should address threats to international peace and security, as directed by the Security Council.

F. Asylum

142. In previous reports (S/2005/83, note 84 and S/2004/679, para. 86), the Team noted that, subject to further consideration of the legal issues, a possible new sanctions measure could deny asylum to anyone on the Consolidated List. While it may not be a common practice, Al-Qaida terrorists will use whatever means they can to establish themselves, including by claiming asylum, and many States have expressed concern to the Team that other States are allowing terrorists to claim (and obtain) asylum to avoid extradition and prosecution for their crimes.

143. Protections to individuals seeking asylum under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol are already qualified in three relevant respects. First, in order to be eligible for refugee status, an individual must show that he or she has a "well-founded fear of persecution" on the grounds of race, religion, nationality, membership of a particular social group or political opinion (article 1A (2)). As noted by the Office of the United Nations High Commissioner for Refugees (UNHCR), persons suspected of terrorism may not be eligible for refugee status in the first place — their fear being legitimate prosecution as opposed to persecution.[95] Second, even if such a legitimate ground can be shown, the asylum seeker is subject to the exclusion exceptions under article 1F, which deprive those guilty of heinous acts, and serious common crimes, of international refugee protection and ensure that such persons do not abuse the institution of asylum to avoid being held legally accountable for their acts. In addition, article 33(2) contains

[94] Many regional zones have indicated that they intend to model their developing systems on the European Union. See, for example, Council on Hemispheric Affairs, "South American unity may no longer be a distant dream", 11 April 2005, cited on Venezuela Information Office site at www.rethinkvenezuela.com/news/04-11-05coha.html. Accordingly, it may be that the rules established in the European Union with respect to the travel of United Nations-listed parties eventually will be utilized by other regional zones.

[95] "Guidelines on international protection: application of the exclusion clauses: article 1F of the 1951 Convention relating to the Status of Refugees", UNHCR document HCR/GIP/03/05, 4 Sept. 2003, para. 25.

an exception to the principle of *non-refoulement* where there are reasonable grounds to believe an individual poses a danger to the host State.[96]

144. Considering the well-established principles in this area, the Team recommends that the Council and the Committee urge States to take appropriate steps to ensure that asylum is not granted to persons on the Consolidated List unless in accordance with national and international law, including the applicable treaties and conventions.[97] The Team notes the concerns of certain States that United Nations-listed parties and other terrorists not be permitted to claim asylum under an alias or based on incomplete or falsified information, and encourages relevant national and international authorities to consider these concerns when drafting and implementing asylum procedures.[98]

IX. Al-Qaida and the Internet

145. In its second report (S/2005/83, paras. 149 and 150), the Monitoring Team drew attention to the growth of Al-Qaida's use of the Internet as an immediate, dynamic, inexpensive, universally accessible and potentially secure means of written and oral communication, through which it could radicalize and, potentially, recruit terrorists, as well as train them and plan attacks. As international pressure on Al-Qaida has grown, so too has its reliance on the Internet. The detentions of Mohammed Naim Noor Khan,[99] a Pakistan-based Al-Qaida computer expert responsible for maintaining e-mail contact with Al-Qaida affiliates and operatives around the globe, and of his cousin, Babar Ahmed,[100] who is charged with using Internet websites and e-mail to solicit support and resources for terrorist purposes, illustrate the level of computer literacy among many Al-Qaida operatives.

146. Simple searches of the Internet can result in access to a range of sites that promote the Al-Qaida terrorist message through a mix of religious and political

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[96] The principle of *non-refoulement* is set down in article 33(1) of the Refugee Convention and prohibits States from expelling or returning a refugee "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

[97] This recommendation is in accord with resolution 1373 (2001), by which the Security Council called upon States to "take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts".

[98] Many jurisdictions already are working on the matter. In 2004, for example, the European Union agreed to new rules on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons otherwise in need of international protection. EU member States must implement these rules before 10 October 2006. One of the rules provides that a person is excluded from being a refugee where there are serious reasons for considering that he has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter. This encompasses persons who commit terrorist acts, or finance terrorism, as well as those who instigate or otherwise participate in the commission of such acts. A person's refugee status must also be revoked, ended or not renewed if such information comes to light after that status has been granted. See Council directive 2004/83/EC, Official Journal of the European Union L 304, 30 September 2004, p.12.

[99] See www.fco.gov.uk/Files/kfile/CM6340.PDF.

[100] See www.usdoj.gov/usao/ct/Documents/AHMAD%20extradition%20affidavit.pdf.

misinformation, and provide a gateway to chat rooms and websites encouraging the translation of this message into action, whether through fund-raising or by explaining the intricacies of bomb-making. While it is both untenable and unhelpful to argue that exposure to these sites alone leads to terrorism, the glorying of Al-Qaida and the clear message of incitement have added fuel to a much wider debate on regulation.

147. In addition to the freedom of speech concerns that immediately arise, there are clearly other legal and technical issues to consider. The fact that this virtual arena traverses national boundaries, as well as the transitory nature of Internet sites, gives rise to significant practical difficulties in regulation. Member States have pointed out that sites that promote terrorism in one country are almost invariably located in another. Clearly if there is a way to address these challenges, it must be through extensive international agreement and cooperation.

148. The international community is increasingly aware of the problems posed by terrorist use of the Internet and discussion has begun on possible measures to address them. In December 2004, the Organization for Security and Cooperation in Europe (OSCE) recommended the establishment of an expert group to consider possible legal and institutional means to address the threat and enhance international cooperation;[101] in February 2005, the Working Group on Internet Governance (WGIG) produced a paper for discussion by its parent body, the World Summit on the Information Society (WSIS);[102] in June 2005 a meeting of the Council of Arab Ministers of the Interior in Tunis recommended specific measures to deal with terrorist use of the Internet; and in the same month the meeting of Group of Eight justice and home affairs ministers in Sheffield, United Kingdom, agreed that the issue should be put on the agenda for the Group of Eight summit in July 2005.

149. The technical challenges posed by the problem are also the subject of discussion, and it seems clear that if action is agreed, it will fall not only to States and regional and international organizations to devise solutions, but also to key elements of the industry such as Internet hosting companies and Internet service providers.

150. At the State level, some have begun to ask if counter-terrorist measures that apply in other fields, such as know-your-customer rules, could also apply to companies that host websites. Some have argued that these companies should in any case take steps to close down sites that teach terrorist techniques, such as the production of explosives, or the use of weapons likely to cause mass casualties. Unsurprisingly, officials responsible for protecting the State from terrorist attack also argue for laws that would allow Internet service providers to supply authorized government agencies with, for example, the Internet protocol addresses used by Al-Qaida operatives, the "trace route"[103] of messages and the content of Al-Qaida communications, whether sent by e-mail or file transfer protocol.

151. Others, such as WGIG, while recognizing the advantages of such measures for law enforcement, believe that the introduction of mandatory regulation could violate basic human rights. The workshop convened to discuss the Internet at the

[101] OSCE decision No. 3/04, 7 December 2004.

[102] WSIS document WSIS-II/PC-2/DOC/5-E, 21 February 2005.

[103] The route, be it local or international, that an electronic message follows from one Internet server to another in order to be accessible to the intended recipient.

International Summit on Democracy, Terrorism and Security, held in Madrid from 8 to 11 March 2005, concluded that the Internet should remain free from any further regulation or interference, allowing open debate to defeat the ideas of extremism. Some industry officials also fear that any regulation in this area could hamper the growth of the Internet and related technology, particularly in the developing world.

152. The Team said in its previous report (S/2005/83, para. 150) that it would explore, for the Council's possible consideration, proposals to restrict the provision of certain Internet services to individuals and entities on the Consolidated List and to introduce know-your-customer rules for Internet service providers. It is clear that any measures, even to address direct incitement to terrorism or instruction in devising weapons of mass casualty, will have to be introduced on a gradual basis, and after much consultation between government officials, industry experts and other relevant parties.

X. Monitoring Team activity

A. Visits

153. The Team has visited 16 States since December 2004.[104] The purpose of these visits was to monitor implementation, including gathering examples of best practice, to spread awareness of the work of the Committee, build the international consensus vital to the success of the sanctions regime, and monitor the spread and reach of Al-Qaida and the Taliban so as to be better able to offer suggestions to the Committee for its further work. A Team member also accompanied the Chairman of the Committee on his visit to three countries (Germany, Turkey and Syria) and to the European Union in Brussels.

B. International and regional meetings

154. The Team attended important international meetings such as the Counter-Terrorism Committee (CTC) fourth special meeting, in Almaty; the second meeting of the Commonwealth Terrorist Action Group (CTAG), in London; the International Conference to Combat Terrorism held in Riyadh, Saudi Arabia; the International Summit on Democracy, Terrorism and Security, in Madrid; and the first working group meeting for Project Fusion-Kalkan held by Interpol in Almaty. The team also held meetings with officials of the European Union in Brussels and at a seminar in New York, and with representatives of the Global Programme on Money Laundering and other bodies of the United Nations Office on Drugs and Crime, the International Atomic Energy Agency (IAEA) and OSCE on their work relating to counter-terrorism and the implementation of the Al-Qaida/Taliban sanctions measures.

155. The Team also held its second meeting in Geneva in May 2005 for heads and deputy heads of intelligence and security services of six Arab States,[105] continuing

[104] France, Kenya, Mali, Mauritania, Niger, the Russian Federation, South Africa, the Sudan and the United Republic of Tanzania and follow-up visits to Afghanistan, Libya, Morocco, Pakistan, the United Arab Emirates, the United States and Yemen.

[105] Algeria, Egypt, Libyan Arab Jamahiriya, Morocco, Saudi Arabia and Yemen.

its discussions on the threat posed by Al-Qaida and possible further measures to address them for consideration by the Security Council.

C. Cooperation with the Counter-Terrorism Committee and the Committee established pursuant to resolution 1540 (2004)

156. The Team has continued to promote and encourage exchange with the experts appointed to assist the Counter-Terrorism Committee and the emerging Counter-Terrorism Committee Executive Directorate, and has participated in three Committee meetings at which presentations have been made on areas relevant to the Team's work.[106] Discussion has identified synergies wherever possible and has ensured that the work of the two expert groups has provided mutual benefit, particularly in the assessment of the capacity and vulnerability of Member States, and has limited the reporting burden on States to the extent possible. Where both groups have been asked to attend the same conference or meeting, where appropriate, one has carried a brief for the other. The Team remains convinced that, despite the distinct mandates of the two Committees, there will be considerable further scope for cooperation between the expert groups once the Executive Directorate is fully operational. A particular area where the Team hopes to be able to help the Executive Directorate is through the database that the Team has developed in conjunction with the Secretariat. The Team has also held frequent discussions with the expert group established to support the Committee established pursuant to resolution 1540 (2004) to ensure that there is a proper synergy between the Team's work on the arms embargo and the 1540 experts' work on non-proliferation of weapons of mass destruction to non-State actors.

D. Cooperation with other United Nations bodies

157. The Team appeared before the Working Group established pursuant to resolution 1566 (2004) to discuss terrorism and sanctions. It also had further meetings with the Monitoring Group established pursuant to resolution 1519 (2003) on Somalia in relation to the arms market in Mogadishu and regional financial flows, and met the Panel of Experts established pursuant to resolution 1579 (2004) on Liberia to discuss the movement of precious commodities. It also held discussions with investigators from the Special Court for Sierra Leone and continued to meet the Group of Experts established pursuant to resolution 1533 (2004) on the flow of arms to the Democratic Republic of the Congo.

E. Talks and meetings

158. The Team has further promoted the work of the Committee through presentations at the Columbia University Law School, and through discussion with academic institutions in the counter-terrorism field such as the Fourth Freedom Counter-Terrorism Evaluation Project, the Watson Institute at Brown University and other tertiary institutions. The Team has had several meetings with officials of

[106] Presentations by Michael Sheehan of the New York Police Department, Judge Baltasar Garzon, Spanish prosecutor, and Jean-Louis Fort, President of FATF.

Member States dealing with counter-terrorism,[107] particularly from their legal and financial ministries, and with institutions such as the International Monetary Fund, the United Nations Capital Development Fund and Interpol.

F. Database

159. The design of a database to facilitate the efficient retrieval, storage, management and analysis of all the data which the Team has gathered has now progressed through all the necessary stages, and the database is currently under construction. The system is intended to be available to various groups of users, including the Counter-Terrorism Committee Executive Directorate and the experts appointed to support the Committee established pursuant to resolution 1540 (2004), while protecting material provided by Member States in confidence.

[107] For example, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom and the United States.

Annex I

Legal methods used by selected jurisdictions to freeze assets of United Nations-listed persons

1. Pursuant to section V of the present report, the Team offers the following summaries of the assets freeze mechanisms of certain selected States and territories.[a]

A. Selected States with an automatic freeze of assets

2. **Argentina**. Argentina has issued executive decrees, most recently decree 1521/2004 of November 2004, permitting it to freeze the assets of those listed pursuant to the relevant Security Council resolutions. The Ministry for Foreign Affairs, International Trade and Worship issues resolutions incorporating additions to the Consolidated List, and the Central Bank oversees the freezing of any financial assets (see S/AC.37/2003/(1455)/29, Part III and previous country reports cited therein).

3. **Australia**. Australia implements the United Nations Al-Qaida and Taliban sanctions, in part, through the Suppression of the Financing of Terrorism Act 2002 and the Charter of the United Nations (Terrorism and Dealing with Assets) Regulations 2002. As soon as a party is listed by the United Nations, its assets are frozen under Australian law and its name automatically incorporated onto a list maintained by the Department of Foreign Affairs and Trade (see www.dfat.gov.au/icat/freezing_terrorist_assets.html).

4. **European Union**. The European Union adopted the sanctions imposed by Security Council resolution 1390 (2002) through a common position of the Council of the European Union dated 27 May 2002 (2002/402/CFSP), amended by common position 2003/140/CFSP. The Council thereafter approved a regulation (No. 881/2002) to implement the sanctions, naming those on the Consolidated List. The European Commission is required to update the regulation every time a new name is added to the Consolidated List (see, for example, Commission regulation No. 301/205), and Council guidelines (Council document 15579/03, 3 December 2003) call for that update to occur within three working days of the additions to the Consolidated List. The Council and Commission regulations are directly applicable statutory law in all 25 European Union member States.

5. **Pakistan**. Pakistan publishes the names of listed individuals and entities in its official gazette after each United Nations listing, and this publication authorizes and requires that any assets of the listed parties be frozen. Pakistan relies upon its United Nations (Security Council) Act, 1948, as the basis for the assets freeze and other sanctions.

6. **Russian Federation**. The Russian Federation has implemented the sanctions by virtue of presidential decrees. Most recently, decree No. 393 of 17 April 2002 echoes the wording of Security Council resolution 1390 (2002) in establishing an assets freeze, arms embargo and travel ban. The Ministry for Foreign Affairs is directed by this decree to circulate updates to the Consolidated List to relevant

[a] The Team obtained details of the selected States' legislative and regulatory practices via the States' reports to the United Nations, as well as from officials of those States.

executive departments as soon as possible, and the sanctions become effective as to the new names once the names are circulated by the Ministry.

7. **Singapore**. Singapore issued anti-terrorism regulations in 2001 based on the authority of its United Nations Act (2001). Once individuals and entities are placed on the Consolidated List, they are added to a schedule attached to the regulations, which requires the freezing of their assets.

8. **South Africa**. The Protection of Constitutional Democracy against Terrorist and Related Activities Act (2005) states that the South African President "must" publish the names of those parties listed by the Security Council under Chapter VII of the Charter. The publication of this notice, read together with the terrorist financing offence which includes a prohibition against any dealing with property of a party listed in such a notice, affects a freezing of the relevant assets.

9. **Switzerland**. In 2002, the Swiss Parliament enacted the Federal Act on the Implementation of International Sanctions, which explicitly authorizes the Government to enact compulsory measures in order to implement sanctions that have been imposed by the United Nations, by the Organization for Security and Cooperation in Europe or by Switzerland's most significant trading partners. In practice, the Federal Council adopts an ordinance to implement each particular sanctions regime, including the United Nations Al-Qaida/Taliban list, with an annex listing the targeted individuals and entities. The Federal Department of Economic Affairs automatically issues an amendment to the annex to incorporate any additional names as they are added to the Consolidated List.

10. **United Kingdom**. In the United Kingdom, a State member of the European Union, the Al-Qaida and Taliban (United Nations Measures) Order 2002 defines a listed person as including Osama bin Laden or a person designated by the United Nations sanctions committee and authorizes the Treasury to freeze assets upon reasonable grounds to believe they belong to listed persons or someone acting on their behalf (see Order, statutory instrument 2002 No. 111, sects. 2 and 8).

B. Selected States with executive discretion to freeze assets

11. **New Zealand**. The Terrorism Suppression Act, 2002, authorizes the Prime Minister to designate individuals and entities based on a variety of factors, including information from the Security Council or one of its committees. A designation results in the freezing of all assets (Terrorism Suppression Act, sects. 20-23 and 31).

12. **United Republic of Tanzania**. The Prevention of Terrorism Act, 2002, part III, allows the minister responsible for home affairs to declare parties to be international terrorists or terrorist groups if they are listed in accordance with Security Council resolutions or instruments of the international community. Once so declared, the Minister may order their assets frozen, among other sanctions.

13. **United States**. The International Emergency Economic Powers Act (50 USC sects. 1701-1707) authorizes the President to designate parties and freeze their assets during periods of declared national emergencies. Pursuant to Executive Order 13224, issued 23 September 2001, the President declared a national emergency with respect to the threat posed by foreign terrorists, redesignated Al-Qaida, Osama bin Laden and others as terrorists under the Order, and delegated his power to designate additional terrorists and their supporters and to freeze their assets to the Secretaries of State and the Treasury.

Annex II

Litigation by or relating to individuals and entities on the Consolidated List

1. In its second report (S/2005/83, annex II), the Team provided an overview of litigation involving listed parties filed in courts around the world. The following represents an update of the status of the various legal proceedings.[a]

2. Some individuals and entities have filed multiple lawsuits challenging their listing. For example, Yasin Al-Qadi has court challenges pending before the European Court of Justice and in Turkey (and has filed administrative actions in other countries, including the United States); two companies owned or controlled by Ahmed Idris Nasreddin brought lawsuits, one in Italy and the other in Turkey; Global Relief Foundation has an action pending in the United States, and its European directors filed a case in Belgium; and Al-Haramain Foundation was the subject of legal proceedings in the Netherlands, while its chairman filed a lawsuit in the United States.

A. Belgium

3. On 11 February 2005, the Brussels Court of First Instance handed down a ruling in a case filed against the Belgian State by Nabil Sayadi and his wife, Patricia Vinck, both of whom were officers of Fondation Secours Mondial, the European branch of Global Relief Foundation. The United Nations placed Global Relief Foundation on its Consolidated List on 22 October 2002, with Fondation Secours Mondial included as an alias. Sayadi, the director of Fondation Secours Mondial, and Vinck, its secretary, were listed as individuals by the United Nations on 22 January 2003 and thereafter by the European Union. Not only were both officers of Global Relief Foundation, but substantial evidence indicated that the couple had many contacts, including financial ones, with individuals with "responsibilities in the Al-Qaida network", such as Wadih El Hage, personal secretary to Osama bin Laden; Rabid Haddad, president and founder of Global Relief Foundation; and Mohammed Zouaydi, financier of the Al-Qaida network.

4. After their listing, Sayadi and Vinck sued in Belgium, asking the Government to seek their de-list by the United Nations and the European Union. The Government of Belgium defended the case and argued that the Court had no jurisdiction to interfere with the United Nations or the European Union. The Court rejected the Government's defence with the following reasoning: (a) conceding that the Court had no jurisdiction to interfere with the decisions of the United Nations; (b) recognizing that Belgium could only de-list the persons and unfreeze the assets if the United Nations and European Union did so first; but (c) stating that the Court could decide the case because the plaintiffs were only requesting that Belgium make a de-listing request to the United Nations (not that the United Nations must actually de-list). The Court obliged the Belgian State, because the couple was not indicted

[a] The following annex has been prepared based upon court documents, as well as information provided by the authorities of certain States. It includes only cases involving individuals and entities listed pursuant to the Al-Qaida/Taliban sanctions, and not challenges to other United Nations sanctions programmes, such as the case of *Bosphorus Airways* v. *Ireland* (No. 45036/98) pending before the European Court of Human Rights.

after a two-and-a-half year investigation, to initiate a de-listing request to the United Nations under penalty of a daily fine for delay in performance. Thereafter, Belgium initiated a de-listing request to the Committee based on the Court judgment, but the Committee so far has not publicly acknowledged any action on it.

B. European Union

5. Five cases involving United Nations-listed individuals and entities have been filed before the European Court of Justice and were described in the Team's second report (S/2005/83, annex II, paras. 2-6). None has been decided, although a judgment is scheduled to be delivered by the Court of First Instance on 21 September 2005 in two of them: a joined matter in one case with two parties, Swedish citizen Ahmed Ali Yusuf and Al Barakat International Foundation, and another case filed by Yassin Abdullah Kadi, a Saudi Arabian citizen.

C. Italy

6. As the Team noted in its second report (S/2005/83, annex II, para. 7), listed entity Nasco Business Residence Center SAS filed a lawsuit in January 2003 in an Italian court challenging its European Union listing (which was based on the United Nations listing), but the court denied the case on the grounds of a lack of jurisdiction. No form of appeal or other judicial initiative was filed.

D. Netherlands

7. On 31 March 2005, a district court in the Netherlands rejected an application by the Public Prosecution Service to ban and dissolve the Netherlands branch of the Al-Haramain Foundation, known as Stichting Al-Haramain Humanitarian Aid. The United Nations listed the Netherlands branch of Al-Haramain and its chairman Aqeel Al-Aqil on 6 July 2004.[b] The European Union incorporated the United Nations listing via an annex to a regulation of the European Commission, and Dutch authorities incorporated the European Union regulation in its internal law. Netherlands prosecutors thereafter sought to ban and dissolve the organization and release any credit balance of the organization's bank account to the State, but the court ruled the Government had not proven that the Netherlands branch of Al-Haramain, separate and apart from the international organization, had supported terrorism. Dutch prosecutors said they plan to appeal the court's ruling, as well as to seek further information on Al-Haramain and Al-Aqil from the United States. The Government of the Netherlands said the court's ruling will have no impact on its ability to enforce the United Nations sanctions against the Netherlands branch of Al-Haramain or Al-Aqil.

[b] The United Nations also has listed Al-Haramain offices in Afghanistan, Albania, Bangladesh, Bosnia and Herzegovina, Comoros, Ethiopia, Indonesia, Kenya, Pakistan, Somalia, the United Republic of Tanzania and the United States.

E. Pakistan

8. As the Team noted in its second report (S/2005/83, annex II, para. 8), a listed entity, the Al-Rashid Trust, filed a petition against the freezing of its assets with the local court (High Court of the southern province of Sindh). The case remains pending.

F. Switzerland

9. In April 2005, the federal criminal court in Bellinzona decided a case brought by listed entity Nada Management Organization against the Swiss federal prosecutor's office. The federal prosecutor opened an investigation into Nada Management in October 2001 and froze its assets the following month, saying the firm and its two directors, Youssef Nada and Ali Ghaleb Himmat, were under suspicion of support of a criminal organization linked to the September 11 attacks. The United Nations added to the list Nada Management, formerly known as Al Taqwa Management Organization, and its two directors on 9 November 2001, and the company went into liquidation in December 2001.

10. In January 2005, Nada Management brought suit in the federal criminal court, seeking an end to the investigation. On 27 April 2005, the court ruled that the prosecutor either had to bring criminal charges or drop the case. Since the federal prosecutor did not have the decisive evidence that would have allowed the transfer of the case to the investigating magistrate and subsequently to the federal judge, he decided on 31 May 2005 to stop the investigation. The Court ordered the federal prosecutor to pay a fee of 3,000 Swiss francs ($2,514) for the attention of Nada's lawyer. Switzerland will continue to freeze Nada's assets because the company and its directors remain on the Consolidated List.

G. Turkey

11. As the Team noted in its second report (S/2005/83, annex II, paras. 9 and 10), Turkey has faced two legal challenges to United Nations listings, one by an individual, Yasin Al-Qadi, and the other by an entity, Nasco Nasreddin Holding AS, with both claiming they were listed incorrectly, for political reasons, and in violation of their rights. Both cases remain pending.

H. United States

12. Aqeel Al-Aquil filed a lawsuit on 11 May 2005 in federal district court in the District of Columbia against officials of the United States Department of Justice, State and the Treasury, claiming that his designation as a terrorist by the United States Government on 2 June 2004 violated his rights under the United States Constitution. Al-Aquil, a resident and citizen of Saudi Arabia, was chairman of Al-Haramain Islamic Foundation, which was based in Saudi Arabia until it was shut down by Saudi authorities in 2004. On 6 July 2004, the United Nations listed him under the family name Al-Aquil, along with various offices of Al-Haramain in Afghanistan, Albania, Bangladesh, Ethiopia and the Netherlands (the United Nations has listed other Al-Haramain offices both before and after that listing).

Because the case was filed recently, the United States Government has not yet submitted any response to the court.

13. There has been no substantial change in status of the other four relevant cases filed in the United States and mentioned in the Team's second report (S/2005/83, annex II, paras. 11-13). Two of those cases — one filed by a charity, Benevolence International Foundation, and the other by money remittance firms and a related individual — were dismissed years ago. The other two cases remain active: some claims of Global Relief Foundation challenging its listing are pending before a federal district court, while its other claims were dismissed in 2002. The Government has sought to dismiss a case challenging a relatively new United States policy requiring charities that solicit funds through a federal programme to certify that they do not knowingly employ individuals or contribute funds to entities found on the Consolidated List or the terrorism lists of the United States and the European Union.

Annex III

Best practice with respect to Financial Intelligence Units

1. In its second report (S/2005/83, paras. 95-96), the Monitoring Team recommended that the Security Council urge States that have not yet established a Financial Intelligence Unit to do so. It continues to believe that Financial Intelligence Units can play a vital role in identifying financial transfers associated with individuals and entities on the Consolidated List.

2. To be effective, a Financial Intelligence Unit should be a national agency responsible for requesting, receiving and analysing information on financial transactions, with a duty to disseminate information to the authorities responsible for identifying the proceeds of crime and investigating offences, including money-laundering and the financing of terrorism.

3. There are many Financial Intelligence Units that meet agreed international standards, but an example of "best practice" is given below.

4. The Financial Intelligence Unit became operational in the early 1990s. It was established by legislation introduced to address a growing problem of money-laundering by organized criminal groups, and amended in 2002 to deal with the suppression of terrorism financing. "Cash dealers" are obliged to identify their customers, maintain records of customer identification and customer account activity for at least seven years after the account is closed, and to report to the FIU significant cash transactions (over $7,000), suspect transactions, and funds transfer instructions into or out of the country. The legislation provides legal protection for cash dealers who file suspect transaction reports and makes it an offence to alert the parties concerned.

5. The provisions of the legislation allow Government investigators, on the basis of the information provided to the Financial Intelligence Unit, to request additional information relevant to the subject of any suspect transaction report without a search warrant or other judicial order, though investigators would need to collect the information again under warrant if they later wished to use it in evidence. Therefore, for example, investigators may request bank statements for a period prior to a suspicious transaction.

6. Cash dealers are defined both by function, such as a financial institution, and by activity, such as a person who operates a casino. In addition, any person who moves significant amounts into or out of the country is also obliged to report to the Financial Intelligence Unit. So too are solicitors when involved in significant cash transactions on behalf of clients. An extensive list of financial, non-bank financial institutions and non-financial entities is covered by the legislation, which will in future also include accountants, company and trust service providers, real estate dealers and dealers in precious metals and stones.

7. The legislation contains strict secrecy provisions in order to protect legitimate financial transactions and defines the authorities that are entitled to have access to information, and how they may use and store it. The Financial Intelligence Unit shares information with overseas counterparts, both directly and through law enforcement channels. This activity is governed by national laws and by memorandums of understanding drawn up with each of the Unit's key international partners.

8. The Financial Intelligence Unit has memorandums of understanding with those domestic authorities and agencies entitled to access its information in connection with their regulatory or investigative role. The Unit's database is available online to those agencies, and as over 99 per cent of transactions reported by cash dealers are sent electronically via a secure system, it is always up to date. Currently the database contains over 67 million reports. Users can also search for connected transactions and place "alerts" on the financial activity of specific individuals or entities. In 2003/2004 the Unit contributed to 1,743 investigations, with one revenue authority reporting that intelligence from the Unit assisted investigations that recovered an additional $75 million in tax.

9. The Financial Intelligence Unit also initiates its own analysis of financial transaction reports and disseminates financial intelligence assessments to relevant authorities. The Unit participates in multi-agency task forces set up to investigate money-laundering and predicate crimes, including the financing of terrorism. It sends officers to work alongside law enforcement and security agencies to ensure that they gain maximum benefit from the Unit's information. In relation to terrorist financing, this includes examining low-value international funds transfer instructions as terrorist financing may involve only small amounts.[a]

10. In its regulatory role, the Financial Intelligence Unit maintains standing committees that ensure that the providers of financial transaction reports are consulted regarding the implementation and operation of the relevant provisions of the legislation. The Unit provides guidance to reporting entities through, for example, bilateral meetings, guidance notes, newsletters and its website, on activity that might be suspicious. Cash dealer representatives sit on a Committee chaired by the Unit that monitors privacy concerns.

11. The Unit assesses cash dealer compliance with the legislation. It uses a combination of information technology programmes and human resources to identify and analyse anomalies in compliance activity. It also seeks to identify individuals and businesses that provide alternative remittance services, including those that have not engaged with the Unit as required by law.

12. The Unit has recently launched an "e-learning" programme for both the public and private sector that has modules on money-laundering, know-your-customer regulations and other legislation.

13. The Unit maintains the confidence of the Government and the public and ensures transparency and accountability through annual reports and other means, including education and awareness-raising programmes.

[a] References to the use of wire transfers for as little as $5,000 by the 9/11 attackers can be found in the Monograph on Terrorist Financing released by the National Commission on Terrorist Attacks upon the United States (9/11 Commission), at www.9-11commission.gov/staff_statements/index.htm, pp. 53 and 134.

Annex IV

Description of categories of arms used by Al-Qaida

1. This annex gives a brief description, but not a definition, of the types of arms available to Al-Qaida and the ways they may be used. The table gives examples of each category.

2. **Military weapon systems** are designed to be highly reliable, compact and effective when used by States' forces. Usually they require minimum training for basic operation, although experienced operators may use them more effectively. Limited market access and trade restrictions mean that they can be difficult and expensive to obtain, although in some regions, particularly in conflict areas such as Somalia, they are readily available and relatively cheap.

3. **Commercial dual-use systems** are produced for civilian purposes but can also be used in terrorist attacks. Some types of expertise can also be applied for both military and civilian purposes, for example, demolition engineering, flight training and encryption/decryption techniques. Dual-use systems are generally more available than military systems, but may be difficult to transport and are not geared to fulfil the specific purposes of Al-Qaida. They may also be less safe and reliable under operational conditions.

4. **Improvised weapon systems** can be constructed from various components to commit terrorist acts. Using military components for critical functions can increase the reliability of entire systems, for example, the use of military explosives and detonators in improvised explosive devices. Improvised systems can be cumbersome, unreliable, relatively difficult to use and also more expensive than industrially produced equivalents. Construction of improvised systems may require secure premises and can be time consuming as well as dangerous; several insurgent or terrorist bomb-makers are known to have been injured or killed in accidents due to manufacturing errors, the poor quality of materials or sabotage of components.

5. **Improvised methods**, such as the use of hijacked airplanes by the 11 September 2001 terrorists, can cause massive destruction without the use of any actual weapon system. Although of central importance to national security, this form of attack is not directly relevant to the arms embargo.

Examples of weapons in each category of arms

Category	*Small arms and light weapons*	*Explosives*	*Chemical, biological, radiological and nuclear*
Military	Machine guns (M-60, PKM), military rifles (M-16, AK-47, G-3), rocket propelled grenades (RPG-7), man-portable air defence systems.	C-4, Semtex, TNT and RDX.	Artillery shells or rockets designed to disperse chemical or biological substances, tactical nuclear demolition devices.
Commercial dual-use	Hunting rifles and shotguns, sporting weapons.	Engineering and mining explosives, e.g. dynamite. Recreational explosives, e.g. gunpowder.	Crop dusting aircraft or equipment, other chemical dispensers. Radiation sources produced for medical or scientific purposes.
Improvised weapons systems	Home-made firearms. Molotov cocktails. Improvised rockets made in metal workshops.	Improvised explosive devices and home-made explosives, e.g. ammonium nitrate and urea nitrate. Car bombs.	Radiological dispersal devices or "dirty bombs". Chemical dispersal devices.
Improvised methods		Use of natural gas leakages. Ramming hazardous materials trucks, ships or hijacked airplanes against targets or damaging them in order to cause secondary damage to a nearby target.	Attacking facilities holding chemical, biological, radiological and nuclear materials or similar shipments, e.g. attacks against nuclear plants. Deliberate spreading of contagious diseases by contaminating food or water supply, or through use of human or animal carriers.

Annex V

Chemical, biological, radiological and nuclear terrorism

1. This annex does not seek to establish a definition of chemical, biological, radiological and nuclear terrorism but, for the purposes of the arms embargo, to describe briefly the types of attack that Al-Qaida might launch using chemical, biological, radiological or nuclear devices or materials, and the methods they could deploy.

A. Chemical terrorism

2. By chemical terrorism, the Monitoring Team refers not only to the use of chemical military weapons, but also to the use of dual-use equipment or improvised chemical dispersal devices to spread toxic materials, as well as attacks against chemical facilities to cause the release of such substances. Such attacks include both those intended to cause mass devastation and those intended primarily to terrorize, blackmail or cause economic damage.[a] The description of chemical weapons in the 1992 Chemical Weapons Convention includes specific toxic chemicals and their precursors, munitions, and devices used to deploy them lethally, and any related equipment.[b]

Examples of chemical terrorism

3. In 1993, when Ramzi Yousef carried out the World Trade Center bombing, he considered adding sodium cyanide to the explosive, but did not do so in the end because "it was going to be too expensive to implement".[c] Successful chemical terrorist attacks (using sarin gas) were carried out by the Aum Shinrikyo cult in 1995. The attack in Matsumoto lead to seven deaths and 264 injured, and the Tokyo subway attack killed 12 people and injured some 5,000. The Matsumoto attack was sophisticated because it used a more advanced dispersal method than the one in Tokyo. The sarin gas attack in the Tokyo underground showed that a major psychological impact was possible even in the absence of mass casualties.

4. In March 2004, Jordanian officials prevented a terrorist attack planned by a group linked to Al-Qaida.[d] The objective was to use six chemical dirty bombs, or chemical dispersal devices, and to attack the Jordanian General Intelligence Directorate headquarters. Four trucks were to carry the six devices in metal tanks between four and five cubic metres in size.[e] The devices were designed to produce multiple effects besides the initial explosion, including burns and poisoning from a

[a] See www.ready.gov/chemical.html.

[b] See Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction at www.opcw.org/docs/cwc_eng.pdf. Several exclusions exist; in principal the Convention applies to listed chemicals that may cause death, temporary incapacitation or permanent harm to humans or animals.

[c] See Organisation for the Prohibition of Chemical Weapons (OPCW) website, www.opcw.org/synthesis/html/s6/p9tb1.html.

[d] This example is based on information provided to the Monitoring Team by Jordanian security officials.

[e] Each of the devices contained about 100 kilograms of conventional explosives surrounding several layers of chemicals, including: potassium cyanide, sodium cyanide, hydrogen peroxide, potassium ferricyanide, nitric acid, mixed acids, as well as various insecticides and pesticides. The devices had an electric priming system that allowed the truck drivers to detonate the bombs from their compartments.

toxic cloud and lesser poisonous fumes. It is estimated that the initial lethal range due to blast, fragments, burns and toxic effect would have been approximately 500 metres, compounded by a toxic cloud that would have extended to roughly a kilometre and possibly further, depending on environmental factors such as weather. The plan was disrupted by Jordanian security officials. The case demonstrates that Al-Qaida has the knowledge to employ hazardous chemicals and to obtain them from commercial sources.

B. Bio-terrorism

5. By bio-terrorism, the Monitoring Team means not only the use of military bio-weapons, but also the use of improvised dispersal devices or other methods to spread dangerous pathogens ranging from salmonella to smallpox, as well as attacks against bio-facilities to cause the same effect. Pathogens are considered in this sense to include both the infectious and the non-infectious, such as toxins, in line with the Biological Weapons Convention.[f] Terrorist organizations could obtain military bio-weapons illegally, but it is more likely that they would use dual-use or improvised methods, obtaining pathogens from commercial sources and deploying them through crude dispersal devices, human carriers or in contaminated food or water supplies.

Examples of bio-terrorism

6. Documents recovered from Al-Qaida facilities in Afghanistan suggest that Osama bin Laden enabled biological research there.[g] In January 2003, authorities in the United Kingdom discovered that a group had employed technologically feasible methods to produce ricin, a poison that can be made from the waste left over from processing castor beans.[h] Although the group appeared to have been unsuccessful in producing the toxin, and its use would have produced media impact rather than major casualties, the case demonstrated at least an interest by Al-Qaida in experimenting with bio-terrorism.[i]

7. The objective of the anthrax attacks in the United States in October 2001 was also not to cause mass destruction but to mount a series of symbolic attacks against individuals representing the media and centres of power. The method of attack (enclosing a virulent strain of the bacterium in letters mailed through the federal postal service) was highly effective in terms of publicity, but a major attack designed to cause a far greater number of casualties (for example by dispersing anthrax via an aerosol) would require a much higher degree of technology.

8. During September and October 1984, two outbreaks of salmonella typhimirium occurred in association with salad bars in restaurants in Oregon, the United States. Members of the local Rajneeshpuram commune caused the outbreak

[f] Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (1972).

[g] "Converging Dangers in a Post 9/11 World", testimony of United States Director of Central Intelligence George J. Tenet before the Senate Select Committee on Intelligence, 6 February 2002.

[h] United States Department of Health and Human Services, Centers for Disease Control and Prevention, www.bt.cdc.gov/agent/ricin/index.asp.

[i] Case originally described in the Team's second report (S/2005/83, para. 117, box 6).

by intentionally spraying the pathogen on the salad bars of local restaurants. Their apparent motive was to influence a local election by decreasing voter turnout. It was reported that at least 751 people were affected, of whom 45 were hospitalized. However, intentional contamination was not suspected immediately and a criminal investigation began only about a year after the attacks. Furthermore, the salad bars were frequented by numerous travellers using the adjoining highway, and their sicknesses were likely not included in the recorded totals. Thus the true number of people affected was undoubtedly much higher than 751. Yet, on the basis of this conservative figure, United States officials have estimated the cost of dealing with the outbreak at $10.7 million to $18.9 million.[j] It appears that the group cultivated salmonella typhimirium in a clandestine laboratory inside their compound.[k] The case demonstrates that even a group with limited resources can covertly use bio-terrorism to affect a large number of victims and to cause significant economic damage.

C. Nuclear and radiological terrorism

9. The recently approved International Convention for the Suppression of Acts of Nuclear Terrorism (2005) provides a definition which essentially covers both terrorist use of nuclear explosive devices and radiological terrorism. By radiological terrorism, the Team means the use of radiological dispersal devices or other methods of using radiological substances in connection with a terrorist attack. These can include attacks against facilities that contain radiological materials or shipments of such substances. There are many sources of radioactivity, some that are harmful through long-term exposure and some that may cause death or sickness immediately.[l]

Examples of attempted radiological terrorism

10. In May 2002 Jose Padilla was arrested in Chicago by the Federal Bureau of Investigation.[m] He was an Al-Qaida operative sent by the organization's leadership to carry out mass-casualty terrorist attacks in the United States using either natural gas to destroy apartment buildings or a radiological dispersal device. He had reportedly been provided money, communications and contacts for this purpose. While Abu Zubaydah (included on the Consolidated List under the name Zayn Al-Abidin Muhammad Husayn) and Khalid Sheikh Mohammed were reportedly concerned that a radiological attack would be hard to mount, the former at least believed it feasible and the latter has acknowledged that Padilla could have carried out either type of attack.[n] The case demonstrates that while preferring conventional attacks, Al-Qaida has not only seriously considered but also authorized radiological terrorism.

[j] United States Food and Drug Administration, www.cfsan.fda.gov/~lrd/fr03059a.html.

[k] Document of the United States Federal Bureau of Investigation at www.edgewood.army.mil/downloads/bwirp/mdc_appendix_b02.pdf.

[l] IAEA document IAEA-TECDOC-1344, "Categorization of radioactive sources", establishes five categories of such materials.

[m] *Padilla* v. *Bush et al.*, 233 F. Supp. 2d 564, 2002 U.S. Dist LEXIS 23086 (Southern District New York, 2002).

[n] Remarks of Deputy Attorney General James Comey regarding Jose Padilla, 1 June 2004, at www.usdoj.gov/dag/speech/2004/dag6104.htm.

11. The only known attempt at radiological terrorism took place in Moscow in 1995, when a barrel containing radioactive elements was discovered, reportedly placed by Chechen rebels. The quantity of material used and its radioactivity (cesium-137, used in X-ray equipment and other industrial processes) did not present a serious health hazard.[o]

Indications of nuclear terrorism

12. The Monitoring Team does not have any credible evidence of Al-Qaida or its affiliates obtaining a nuclear explosive device, but a risk remains. IAEA experts indicated to the Team that it is much more likely that terrorists would illicitly obtain a military device than build their own improvised one. However, there are several IAEA reports of lost fission-grade nuclear material discovered by authorities in diverse circumstances, including at border crossings. Among a number of worrying cases, a significant amount of highly enriched uranium was discovered in the Caucasus and it is possible that a larger amount remains unaccounted for.

[o] See www.GAO.GOV/ATEXT/D03638.txt.

Annex VI

Reported violations of arms embargo in Somalia

1. The report of the Monitoring Group on Somalia established pursuant to Security Council resolution 1558 (2004) (S/2005/153) contains information, summarized below, on the procurement of arms by Al-Itihaad Al-Islamiya,[a] an entity associated with Al-Qaida and listed since October 2001. The events reported were also in violation of the arms embargo established by resolution 751 (1992). Two of the names mentioned in the report appear on the Consolidated List: Aweys Hassan Dahir and Hassan Abdullah Al-Turki.[b]

2. On 17 November 2004, a single ship with a foreign registration arrived from a neighbouring Gulf State at the port of Marka in southern Mogadishu carrying a shipment of arms. The arms consisted of PKM machine guns, RPG-7 rocket launchers, hand grenades, anti-tank mines, different types of ammunition and TNT (explosives). The shipment of arms was shared between Sheikh Yusuf Mohamed Said Indohaade, Sheikh Hassan Dahir Aweys and General Mohamed Nur Galal. All three are associated with al-Itihaad Al-Islamiya (S/2005/153, para. 82).

3. A principal Al-Itihaad leader in overall charge of training camps bought AK-47 assault rifles, PKM machine guns, RPG-7 rocket launchers, F1 hand grenades, rifle-fired grenades and mortar shells at the Irtogte arms market between 7 and 21 November 2004. The same individual purchased 2 PKM machine guns, 10 SG-43 medium machine guns, 120 TT-33 Tokarev pistols and 60 magazines for AK-47 assault rifles on 27 November 2004, as well as 16 PKM machine guns and ammunition for RPG-7 rocket launchers on 15 January 2005 (S/2005/153, annex II).

4. The Monitoring Group also told the Monitoring Team that type SA-7 man-portable air defence systems had been sighted in the Bakaaraha arms market in Mogadishu. Since SA-7s were reportedly used to attack Israeli passenger jets in neighbouring Kenya in November 2002, this information warrants concern.

5. In addition, the Group mentioned foreign specialists (including Afghans) training Somali and Sudanese cadres in guerrilla warfare, and Somalis travelling to other conflict zones where Al-Qaida is active in order to observe its operations. The report describes the diversion by Al-Itihaad of funds received from non-governmental sources in the Gulf States to support orphanages and other good causes to purchase arms (S/2005/153, para. 58).

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[a] The report of the Monitoring Group refers to Al-Itihaad Al-Islamiya as "al-Ittihad".
[b] Listed on 9 November 2001 and 6 July 2004, respectively.